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December 3, 2004

Guy M. Hicks
General Counsel

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*
Docket No. 04-00046

Dear Chairman Miller:

Enclosed are copies of the following discovery propounded by BellSouth:

Joint Petition for Arbitration of NewSouth, et al., North Carolina Docket Nos., P-772, Sub 8; P-913, Sub 5; P-989, Sub 3; P-824, Sub 6 and P-1202, Sub 4:

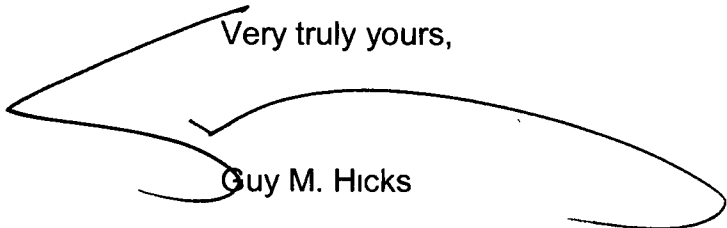
Amended First Set of Interrogatories to Joint Petitioners, filed June 3, 2004
First Set of Interrogatories to Joint Petitioners, filed June 1, 2004
First Set of Requests for Production to Joint Petitioners, filed May 28, 2004.

Joint Petition for Arbitration of NewSouth, et al., Alabama Docket No. 29242

First Set of Requests for Production to Joint Petitioners, filed May 19, 2004
First Set of Interrogatories to Joint Petitioners, filed May 19, 2004.

A copy of this letter is being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

BellSouth Telecommunications, Inc.
Legal Department
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P O Box 30188
Charlotte, NC 28230

edward.rankin@bellsouth.com

Edward L. Rankin, III
General Counsel-North Carolina

704 417 8833
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June 3, 2004

Ms Geneva S. Thigpen
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket Nos. P-772, Sub 8; P-913, Sub 5,
P-989, Sub 3; P-824, Sub 6; P-1202, Sub 4

Dear Ms. Thigpen:

I enclose for filing in the above-referenced docket the original and 31 copies of BellSouth Telecommunications, Inc.'s Amended First Set of Interrogatories to Joint Petitioners. Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward L. Rankin, III". The signature is stylized with a large "E" and "R".

Edward L. Rankin, III

ELR/db
Enclosures

cc Parties of record (By email)

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,)	
NuVox Communications, Inc.	)	Docket No. P-772, Sub 8
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-913, Sub 5
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-989, Sub 3
Operating Subsidiaries	)	Docket No. P-824, Sub 6
	)	Docket No. P-1202, Sub 4
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S AMENDED FIRST SET OF
INTERROGATORIES TO JOINT PETITIONERS**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to the Commission's April 6, 2004 Order Authorizing Discovery, hereby requests NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC ("CLPs" or "Joint Petitioners") to furnish responses to the following Interrogatories in the manner and within the timeframe prescribed by the North Carolina Utilities Commission ("Commission").

STATEMENT OF NECESSITY

The following Interrogatories seek discovery that is necessary for BellSouth to present its case to the Commission. The overwhelming majority of the Interrogatories directly relate to statements made or positions asserted in the Joint Petitioners' Direct Testimony, which consists of over 260 Pages, addresses approximately 85 issues, and is adopted and supported by multiple witnesses in toto. BellSouth must obtain responses to

this discovery in order for it to defend itself and prosecute its positions in the arbitration proceeding before the Commission.

INSTRUCTIONS

1. If any response required by way of answer to these Interrogatories is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.

2. If any response required by way of answer to these Interrogatories is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.

3. These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you.

4. If any Interrogatory cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully.

5. If you object to any part of an Interrogatory, answer all parts of the Interrogatory to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

6. These Interrogatories are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these Interrogatories subsequently become known or should your initial response be incorrect or untrue.

7. Each Petitioner should provide a response to each Interrogatory.

DEFINITIONS

1. "NewSouth" means NewSouth Communications Corp. any predecessors or successors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of New South.

2. "NuVox" means NuVox Communications, Inc. any predecessors or successors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of New South.

3. "KMC Telecom" means KMC Telecom V, Inc. and KMC Telecom III LLC, any predecessors or successors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of KMC Telecom.

4. "Xspedius" means Xspedius Communications, LLC on Behalf of its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, any predecessors or successors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Xspedius.

5. "Joint Petitioners" means NewSouth, NuVox KMC Telecom, and Xspedius.

6. "You" and "your" refers to Joint Petitioners collectively.

7. "Person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

8. "And" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Interrogatories information that would not otherwise be brought within their scope.

9. "Identification" or "identify" when used in reference to: (i) a natural individual, requires you to state his or her full name and residential and business address; (ii) a corporation, requires you to state its full corporate name and any names under which it does business, the state of incorporation, and the address of its principal place of business; (iii) a document, requires you to state the number of Pages and the nature of the document (e.g., a letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location or custodian; (iv) a communication, requires you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and to the extent that the communication was not written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

10. "Arbitration" refers to the Joint Petition for Arbitration filed with the North Carolina Utilities Commission by NewSouth, KMC Telecom, and Xspedius.

11. "Testimony" means the Testimony of Joint Petitioners filed with the North Carolina Utilities Commission.

12. "Commission" means the North Carolina Utilities Commission.

13. The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of Joint Petitioners, including, but not limited

to, e-mails, correspondence, memoranda, drafts, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts, including, but not limited to, electronic mail files, and copies of such writing or records containing any commentary or notation whatsoever that does not appear in the original.

INTERROGATORIES

1. Identify all persons by name, address, and employer participating in the preparation of the answers to these Interrogatories or supplying information used in connection therewith.
2. For each issue that you are identified as sponsoring in the Testimony, please identify all portions of the testimony by line and page number that you drafted or someone else drafted pursuant to your supervision. If someone else drafted your testimony, please identify that person.
3. Please provide the basis and identify all facts and/or documents that support your statement on Page 19 of the Testimony that "BellSouth's proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission's decision is unfavorable to it."
4. Please provide the basis and identify all facts and/or documents that support your statement on Page 21 of the Testimony that "this is a restrictive definition designed to serve some undefined and hereto fore undisclosed BellSouth motive."
5. Please provide the basis and identify all facts and/or documents that support your statement on Page 22 of the Testimony that "[f]or example, under BellSouth's proposed definition of 'End User,' it is arguable that certain types of CLP customers, such as Internet Service Providers ('ISPs'), might not be considered to be 'End Users.'"
6. Please provide the basis and identify all facts and/or documents that support your statement on Page 25 of the Testimony that "[c]ertain traffic passed to NewSouth by BellSouth over our Supergroups with a '0 CIC' would likely result in unbillable and uncollectible revenues." In providing a response, please identify the traffic at issue and all instances when such traffic actually resulted in unbillable and uncollectible revenues, identifying the amounts of any unbillable and uncollectible revenues.

7. Regarding Issue No. G-4, please identify all telecommunications interconnection agreements that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
8. Regarding Issue No. G-4, please identify all contracts that you have with your customers, end users, vendors, or other third-parties that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
9. Please provide the basis and identify all facts and/or documents that support your statement on Page 28 of the Testimony that "the standard liability-cap formulations – starting from a minimum (in some of the more conservative contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract – more universally appearing in commercial contracts."
10. Please provide the basis and identify all facts and/or documents that support your statement on Page 28 of the Testimony that "[t]he Petitioners' proposed risk-vs.-revenue trade off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well." In responding to this interrogatory, please identify each and every contract and/or commercial transaction in "electric power, natural resources and public procurement" that support your testimony.
11. Please identify the "long-established principles of general contract law and equitable doctrines," with appropriate legal citations that you are referring to on Page 28 of the Testimony.
12. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that "[i]n my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for non-performance or improper performance by the other party." In responding to this interrogatory, please identify each and every "experience" you have had that supports your statement.
13. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that "a breach in the performance of services results in losses that are greater than their wholesale costs"
14. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that "these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers

who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach."

15. Regarding your statements on Page 29 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that the "breach in the performance of services results in losses that are greater than their wholesale costs."
16. Regarding your statements on Page 29 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that "losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach."
17. Please identify all end users or customers by name, working telephone number ("WTN") and date of loss that you lost as a result of any alleged breach of performance by BellSouth.
18. Regarding Issue No. G-5, please identify all of your tariffs and/or end user contracts that do not contain any limitation of liability language.
19. Please identify all limitation of liability language that exists in your tariffs and/or end user contracts.
20. Please identify all legal authority, with appropriate citation, that supports your statement on Page 31 of the Testimony that "a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement."
21. Please identify all instances where you have asked a customer or end user rejected your request to agree to liability provisions that are similar to BellSouth's liability provisions, as stated on Page 32 of the Testimony.
22. As to your statements on Page 32 of the Testimony, please identify every instance where you have "conceded" limitation of liability language to "attract customers in markets dominated by incumbent providers," including the name of the customer, the WTN, and date of contract evidencing any concession.
23. Please identify all facts, legal authority and/or documents that support your statement on Page 39 of the Testimony that "[a]s is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each." In

responding to this interrogatory, please identify the specific "commercial-services" that you are referring to.

24. Please identify all indemnification language that exists in your tariffs and/or end user contracts.
25. Please identify, with appropriate legal citation, the "generally-accepted contract norms providing precisely to the contrary," that you are referring to on Page 40 of your Testimony.
26. Regarding Issue G-9, please identify all non Section 252 arbitration proceedings, by date and case-caption, initiated by you against BellSouth at a state public service commission to resolve a dispute between you and BellSouth.
27. Regarding your statement on Page 44 of the Testimony that "BellSouth often is able to force carriers into heavily discounted, non-litigated settlements," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to the carriers at issue, the amount of discount, the litigation that was settled, and how you became aware of each settlement.
28. Regarding your statement on Page 47 of the Testimony that "Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this principle of Georgia law," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying the "BellSouth-initiated litigation" by case-caption you are referring to and the principle of Georgia law (by legal citation) you are referring to.
29. Regarding your statement on Page 47 of the Testimony that "BellSouth's proposal attempts to turn universally accepted principles of contracting on their head," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to an identification of the "principles of contracting" (by legal citation) you are referring to.
30. Regarding Issue G-13, please identify all instances by date, carrier, and interconnection agreement where BellSouth has included a rate in the rate sheet of an interconnection agreement that is not the rate approved by the Commission, as set forth on Page 48 of the Testimony.
31. Regarding your statement on Page 53 of the Testimony that "[n]early all of the CLPs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement," please provide the basis of the

statement and identify all facts/and or documents that support the statement, including but not limited to identifying each "bad experience," the CLP experiencing the "bad experience," the date of the "bad experience," and the reason for the "bad experience."

32. Please explain in detail your statement on Pages 55-56 of the Testimony that "[g]iven the proliferation of the Guide references, accepting BellSouth's language would severely undermine the integrity of the Agreement and, indeed, the entire Section 251/252 negotiation and arbitration process."
33. Regarding Issue G-16, please identify all instances where you have determined that BellSouth tariff changes are "inconsistent with the Agreement, or are unreasonable or discriminatory" as set forth on Page 56 of the Testimony, describing in detail the tariff change at issue, the date of the tariff change, and the reason why you believed that the tariff change was inconsistent, unreasonable, or discriminatory.
34. Please identify the paragraphs of the Triennial Review Order ("TRO") that support the following statements on Page 60 of your testimony wherein you state: "It is my understanding that the FCC concluded, in the TRO, that carriers may convert from UNEs and UNE Combinations to wholesale services and vice versa. It is also my understanding that the FCC concluded such conversions should be seamless and not affect any end-user customer's service."
35. Please provide the basis of and identify all facts and/or documents that support your statement on Page 62 of the Testimony that "converting a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services should not require substantial development and related costs."
36. Please provide the basis of and identify all facts and/or documents that support your statement on Page 67 of the Testimony that retermination of circuits is "likely to be nothing more than a cross-connect."
37. Please provide the basis of and identify all facts and/or documents that support your statement on Page 67 of the Testimony that "[t]he CLPs are not disconnecting a service but rather are rearranging a service that cannot be maintained as currently offered under the Agreement."
38. Please identify the "FCC rules" you are referring to in the following statements on Page 69 of the Testimony:
 - a. "The FCC's rules require that costs associated with Routine Network Modifications can and should be recovered by BellSouth as part of the expense associated with network investments, and therefore should already have been factored into BellSouth's TELRIC costs."

- b. "Indeed, the FCC's rules are very clear that there may not be any double recovery by BellSouth of Routine Network Modification costs by virtue of BellSouth recovering both the cost of the UNE and a new charge for Routine Network Modifications that already have been factored into the UNE rate."
 - c. "The FCC's rules are also very clear that the onus is on BellSouth affirmatively to demonstrate that a requested modification was not contemplated by BellSouth as a 'Routine Network Modification', and that the costs associated with the requested modification were not factored into BellSouth's TELRIC cost studies in any way whatsoever."
39. Please identify the FCC rules that you allege on Page 72 of the Testimony "do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs."
 40. Please identify all legal authority that supports your statement on Page 72 of the Testimony that the "FCC has defined 'commingling' as the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services."
 41. Please identify all legal authority that supports your statement on Page 72-73 of the Testimony that the "FCC has also concluded that Section 271 places requirements on BellSouth to provide network elements, services, and other offerings, and those obligations operate completely separate and apart from Section 251."
 42. Please identify all legal authority that supports your statement on Page 73 of the Testimony that "[t]herefore, the FCC's rules unmistakably require BellSouth to allow Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to Section 271."
 43. Please identify the paragraphs of the TRO that support your statement on Page 74 of the Testimony that "[i]t is my understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment."
 44. Please provide the basis of and identify all facts and/or documents that support your statement on Page 76 of the Testimony that "[a] minimum billing period of 30 days, 2 months, etc. . . would carry with it exclusive use right thereby inhibiting a customer's ability to switch carriers as he or she wishes."

45. Regarding Issue 2-12 and your testimony on Page 77, please identify the paragraphs of the TRO that you are referring to when you state “[s]uch a provision would be inconsistent with the FCC’s Triennial TRO.”
46. Please identify the “issues” and the “reconsideration petition” by date and docket you are referring to on Page 78 of the Testimony, wherein you state: “BellSouth’s proposed language is clearly over-expansive and proposes to pre-decide issues currently before the FCC in at least one reconsideration petition.”
47. Please identify the specific rights to loop access and any legal support for these rights that you are referring to on Pages 78-79 of the Testimony, wherein you state: “Petitioners’ proposed language in Section 2.1.1.2 merely seeks to retain whatever rights CLPs presently enjoy with respect to loop access”
48. Please identify all legal support for your statement that CLPs have the right to “obtain a portion of loop bandwidth so that voice-grade services may be provided by one carrier and other services, such as xDSL-based transport services may be provided by another,” as set forth on Page 79 of the Testimony.
49. Please identify all legal support for your statement that “loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning,” as set forth on Page 80 of the Testimony.
50. Please identify all legal support for your statements that “FCC orders are presumed to become law, and affect substantive rights, on their effective dates. That legal truism does not have to be expressly stated in every FCC rule,” as set forth on Page 82 of the Testimony.
51. Please identify all legal authority, with appropriate citations, that supports your statement that “all facilities and work involved in provisioning, maintaining and repairing UNEs, including loops, must be priced at TELRIC-compliant rates,” as set forth on Page 83 of the Testimony.
52. Please provide the basis of and identify all facts and/or documents that support your statement on Page 85 of the Testimony that “dispatch charges significantly undercut Petitioners’ ability to compete effectively.”
53. Please identify all customers or end users by name, WTN, and date of loss that you were unable to obtain or lost or were unable to acquire because of dispatch charges.

54. Please identify all dispatch charges that you charge your end users or customers.
55. Please identify when you are planning to deploy or use "Etherloop" or "G.HDSL Long" technologies, as described on Page 92 of the Testimony.
56. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 93 of the Testimony that "Federal law provides, without limitation, that CLPs may request this type of Line Conditioning, insofar as they pay for the work required based on TERC-compliant [sic] rates."
57. Please identify all legal authority, with appropriate citations, that supports your statement on Page 98 of the Testimony that "the manner in which UNE loops are provisioned, and whether they are usable for CLP service, is squarely within the parameters of Section 251."
58. Please identify all legal authority, with appropriate citations, that supports your statement on Page 98 of the Testimony that "loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning."
59. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 99-100 of the Testimony that "the FCC has already found, on a nationwide basis, that CLPs should not be made to build new NIDs."
60. Regarding Issue 2-23(D), please identify any and all of the steps, measures, protections, procedures or other processes that you would use to access an "available pair."
61. Regarding Issue 2-24, please identify all instances by date, time, location and WTN, where you have determined that testing of the loop at a place other than the distribution frame and at the end user's premises was required to "detect and pinpoint a problem," as set forth on Page 106 of the Testimony.
62. Please identify all legal authority, with appropriate citations, that supports your statement on Page 106 of the Testimony that federal law "imposes no limitation on a CLP's right to test loops – both lit and dark fiber loops – at any technical feasible point."
63. Please identify all legal authority, with appropriate citations, that supports your statements on Page 107 of the Testimony that "Petitioners will be paying BellSouth for these loops, and should be permitted to do whatever testing is necessary to ensure that they work."

64. Please identify all legal authority, with appropriate citations, that supports your statements on Page 108 of the Testimony that “[t]he law does not require an LOA from a third party carriers [sic].”
65. Regarding Issue 2-28(A) please describe in detail your understanding of “DSL transport” or “DSL service” as used on Page 111 of the Testimony.
66. Please identify all legal authority, with appropriate citations, that supports your statement on Page 117 of the Testimony that “[t]he FCC has concluded that such pre-audits constitute an unjust, unreasonable and discriminatory term and condition for obtaining access to UNE combinations and are prohibited.”
67. Please provide the basis of and identify all facts and/or documents that support your statement on Page 118 of the Testimony that “BellSouth’s conversions of special access to EELs have resulted in damages of approximately \$1.6 million.”
68. Please describe in detail how you calculated the \$1.6 million in damages described on Page 118 of the Testimony.
69. Please identify all FCC or state commission rules or orders that support your position that BellSouth should only be able to perform an EELs audit for cause as set forth on Page 121 of the Testimony.
70. Please identify all telecommunications interconnection agreements that have identical or similar language for EELs audits that you are proposing in this proceeding.
71. Please provide a detailed explanation of what you mean by the “concept of materiality,” as set forth on Page 124 of the Testimony, providing in detail, examples of when noncompliance would and would not be material.
72. Please identify all interconnection agreements that include the “concept of materiality” for EELs audits.
73. Please identify every instance of “controversy” regarding EELs audits by date, carrier, how each controversy was resolved that support your Testimony on Page 125, wherein you state: “Given the history of controversy that has surrounded BellSouth’s EEL audits, the Petitioners understandably have genuine concerns about the legitimacy of BellSouth’s EEL audits.”
74. Please identify all legal authority, with appropriate citations, that supports your statement on Page 128 of the Testimony that “FCC’s rules require that BellSouth provide nondiscriminatory access to the dark fiber transport UNE at any technically feasible point, including access for purposes of conducting splicing and testing activities.”

75. Please identify all legal authority, with appropriate citations, that supports your statement on Page 131 of the Testimony that BellSouth has a "CNAM unbundling obligation."
76. Identify all instances where you lost an end user and that end user returned to BellSouth or where you were unable to acquire an end user because "caller ID does not appear," as set forth on Page 131 of the Testimony. In responding to this request, please identify the customer name, date, and WTN for each end user.
77. Identify all instances when BellSouth mischarged you "for a Local Channel when an intra-office cabling scheme is used to connect [your] point-of-presence to the BellSouth switch," as set forth on Page 135 of the Testimony.
78. Please identify any and all outages that you consider to be a "global outage" for purposes of this agreement.
79. Please identify all instances in which BellSouth provided a root cause analysis to you.
80. Please identify every instance and all documents that your support your Testimony on Page 140 that you have experienced a global outage involving an entire trunk group. In responding to this request, please identify each outage by date, WTNs affected, location of outage, the trunk groups affected, how long the outage existed, the reason for the outage, and whether BellSouth provided a root cause analysis for the outage.
81. Please identify all instances and any documents that relate, address, apply or refer to the use of a root cause analysis to respond to customer inquiries regarding service outages or otherwise.
82. Please identify all documents that relate, address, apply, or refer to any policies you have regarding advising customers as to service problems, "the steps taken to repair and avoid their recurrence in the future," as set forth on Page 141 of the Testimony.
83. Regarding Issue 3-3, please identify all documents, including but not limited to contracts, tariffs, policies statements, and training manuals, that address, relate, pertain, or refer to the backbilling of customers.
84. Please identify all instances where you were unable to bill a customer or end user after 90 days. In responding to this request, please identify each instance by date, customer name, WTNs, and amount of charges that you were unable to bill.

85. Please provide the basis of and identify all facts and/or documents that support your statement on Page 145 of the Testimony that “there is a potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLPs, for unjust termination charges.”
86. Please identify all instances where BellSouth paid third parties without carefully scrutinizing its bills and then attempted to charge CLPs for these “unjustified termination charges,” as set forth on Page 145 of the Testimony. In responding to this request, please identify each instance by date, third party, WTNs, CLP that was asked to pay the “unjust termination charges,” the amount of said charges, and whether the CLP disputed these charges.
87. Please identify all instances where BellSouth paid “third parties even when it has no contractual or other legal obligation to do so,” as set forth on Page 145 of the Testimony.
88. Please provide the basis of and identify all facts and/or documents that support your statement on Page 147 of the Testimony that “[b]ecause factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison.”
89. Please provide the basis of and identify all facts and/or documents that support your statement on Page 148 of the Testimony that “BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power.”
90. Please identify all legal authority, with appropriate citations, that supports your statement on Page 150 of the Testimony that “[t]ransiting is an interconnection issue firmly ensconced in Section 251 of the Act.”
91. Please identify all legal authority, with appropriate citations, that supports your statement on Page 157 of the Testimony that “[t]he FCC has held that obligations imposed by Section 251(c)(2) and 251(c)(3) include ‘modifications to incumbent LECs facilities to the extent necessary to accommodate interconnection or access to network elements.’”
92. Please state whether you have installed the “appropriate hardware” in your switches to allow for OCn interconnection, as alleged on Page 158 of the Testimony.
93. Please identify all legal authority, with appropriate citations, that supports your statement on Page 163 of the Testimony that “[t]o the extent the Parties are carrying non-transit and non-interLATA Switched Access Traffic, the

parties should proportionally split the recurring charges for trunks and associated facilities.”

94. Please identify what percentage of your traffic consists of “non-transit and non-interLATA Switched Access Traffic.”
95. Regarding your Testimony on Page 166, please identify all instances where, after collocating in a BellSouth premise, you have been unable to “gain access to loops, transport, multiplexers, switch ports, optical terminations and the like” by date, central office, and specific equipment you were unable to access.
96. Please identify all legal authority, with appropriate citations, that support your statement on Page 191 of the Testimony that BellSouth is required by federal law to provide subscribers payment history in a CSR.
97. Regarding your testimony on Page 192 of the Testimony that certain Commissions have “already determined” that BellSouth must include subscriber payment history in a CSR, please identify the Commissions you are referring to, the docket in which a Commission made such a finding, and the date of any such finding.
98. Regarding Issue 6-2, for the last 12 months, please provide, on a monthly basis, the number of CSRs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
99. Regarding Issue 6-4, please identify all products and/or services that you have actually ordered or wish to order from BellSouth that you contend cannot be ordered electronically.
100. For each such product or service identified in Interrogatory No. 99, please provide on a monthly basis the number of Local Service Requests (“LSRs”) that you submitted to BellSouth for each product and/or service for the last 12 months.
101. Please provide the basis of and identify all facts and/or documents that support your statement on Page 201 of the Testimony that “NewSouth’s experience has been that a significant amount (we currently estimate 25%) of NewSouth’s facility orders have to be submitted manually because of address validation errors” and that “NewSouth has found BellSouth to be delinquent in updated address records.”
102. Please identify all legal authority, with appropriate citations, that support your position on Page 202 of the Testimony that Service Date Advancements should be charged at TELRIC pricing standard.

103. Regarding Issue 6-6, for the last 12 months, please provide, on a monthly basis, the number of FOCs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a FOC and the date you provided the FOC to BellSouth.
104. Regarding Issue 6-7, for the last 12 months, please provide, on a monthly basis, the number of Reject Responses you provided to BellSouth and the number of business days that elapsed on average between the date of a request for a Reject Response and the date you provided the Reject Response to BellSouth.
105. Please identify all legal authority, with appropriate citations, that supports your position on Pages 208-209 of the Testimony that BellSouth is obligated under federal law to provide performance and maintenance history for circuits.
106. Regarding your statements on Pages 211-212 of your Testimony, please identify (1) all efforts you have undertaken to develop your own OSS systems, (2) the expected completion of your own OSS systems; and (3) all components of your own OSS that remain to be completed.
107. Please identify all documents that relate, address, apply, or refer the development of your own OSS.
108. Please identify all legal authority, with appropriate citations, that support your statements on Page 212 of the Testimony that "BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between a Petitioner and BellSouth Long Distance or another third party carrier."
109. Please identify all end users you lost or were unable to acquire, by name, WTN, and date of loss, as a result of a requirement that the porting of the end user or customer to the CLP is contingent on either the CLP having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the customer or End User changing its PIC.
110. Please identify all long distance carriers that you do not have an operating, billing, and/or collection arrangement with.
111. Please provide the basis of and identify all facts and/or documents that support your statement on Page 216 of the Testimony that "mass migrations at most amount to bulk porting situations. . . ."

112. Regarding your statement on Page 217 of the Testimony that “[t]oo many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner,” please identify (1) the specific obstacles you are referring to; (2) the carriers attempting to perform the mass migration; and (3) the location of the customer base that was migrated or was attempted to be migrated.
113. Please identify all legal authority, with appropriate citations, that supports your position on Page 218 that mass migration services should be priced at TELRIC.
114. Please identify the specific steps and processes that you believe are needed to perform mass migration of customers.
115. Please identify all documents that relate, address, apply, or refer to your allegations on Pages 218-219 of the Testimony that Xspedius once attempted “to accomplish mass migration of several special access circuits to UNE loops.”
116. Please identify all instances in which you have billed BellSouth or another carrier for services rendered more than 90 days after the bill date on which those charges ordinarily would have been billed.
117. Please identify all charges that would not be subject to the exemptions to the 90 day backbilling prohibition you testify about on Page 222 of the Testimony.
118. Please provide the basis of and identify all facts and/or documents that support your statement on Page 229 of the Testimony that “[i]t is my understanding that the BFR/BNR process is a lengthy, expensive and typically unsatisfactory process.”
119. Please identify all instances where you have used the BFR/BNR process with BellSouth.

Respectfully submitted, this 3rd day of June, 2004.

A handwritten signature in black ink that reads "Edward L. Rankin, III". The signature is stylized with a large "E" and "R", and the "III" is written as three distinct vertical strokes.

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ATTORNEYS FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Amended First Set of Interrogatories on parties of record by email this 3rd day of June, 2004.

Dorothy Blache

538823

BellSouth Telecommunications, Inc.
Legal Department
1521 BellSouth Plaza
P O Box 30188
Charlotte, NC 28230

edward.rankin@bellsouth.com

Edward L. Rankin, III
General Counsel-North Carolina

704 417 8833
Fax 704 417 9389

June 1, 2004

Ms. Geneva S. Thigpen
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Docket Nos. P-772, Sub 8; P-913, Sub 5;
P-989, Sub 3; P-824, Sub 6; P-1202, Sub 4

Dear Ms. Thigpen:

I enclose for filing in the above-referenced docket the original and 31 copies of BellSouth Telecommunications, Inc.'s First Set of Interrogatories to Joint Petitioners. Please stamp the extra copy of this letter "Filed" and return it to me in the usual manner.

Thank you for your assistance in this matter.

Sincerely,



Edward L. Rankin, III

ELR/db
Enclosures

cc Parties of record (By email)

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,	)	Docket No. P-772, Sub 8
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-913, Sub 5
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-989, Sub 3
Operating Subsidiaries Xspedius Management Co.	)	Docket No. P-824, Sub 6
Switched Services, LLC, Xspedius Management Co.	)	Docket No. P-1202, Sub 4
Of Birmingham, LLC, Xspedius Management Co.)	
Of Mobile, LLC, and Xspedius Management Co.)	
Of Montgomery, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF
INTERROGATORIES TO JOINT PETITIONERS**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to the Commission's April 6, 2004 Order Authorizing Discovery, hereby requests NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC ("CLPs" or "Joint Petitioners") to furnish answers to the following Interrogatories.

STATEMENT OF NECESSITY

The following Interrogatories seek discovery that is necessary for BellSouth to present its case to the Commission. The overwhelming majority of the Interrogatories directly relate to statements made or positions asserted in the Joint Petitioners' Direct Testimony, which consists of over 260 Pages, addresses approximately 85 issues, and is adopted and supported by multiple witnesses in toto. BellSouth must obtain responses to

this discovery in order for it to defend itself and prosecute its positions in the arbitration proceeding before the Commission.

INSTRUCTIONS

1. If any response required by way of answer to these Interrogatories is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.

2. If any response required by way of answer to these Interrogatories is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.

3. These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you.

4. If any Interrogatory cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully.

5. If you object to any part of an Interrogatory, answer all parts of the Interrogatory to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

6. These Interrogatories are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these Interrogatories subsequently become known or should your initial response be incorrect or untrue.

7. Each Petitioner should provide a response to each Interrogatory.

DEFINITIONS

1. "NewSouth" means NewSouth Communications Corp. any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of New South.

2. "KMC Telecom" means KMC Telecom V, Inc. and KMC Telecom III LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of KMC Telecom.

3. "Xspedius" means Xspedius Communications, LLC on Behalf of its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Birmingham, LLC, Xspedius Management Co. of Mobile, LLC, and Xspedius Management Co. of Montgomery, LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Xspedius.

4. "Joint Petitioners" means NewSouth, KMC Telecom, and Xspedius.

5. "You" and "your" refers to Joint Petitioners collectively.

6. "Person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

7. "And" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Interrogatories information that would not otherwise be brought within their scope.

8. “Identification” or “identify” when used in reference to: (i) a natural individual, requires you to state his or her full name and residential and business address; (ii) a corporation, requires you to state its full corporate name and any names under which it does business, the state of incorporation, and the address of its principal place of business; (iii) a document, requires you to state the number of Pages and the nature of the document (e.g., a letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location or custodian; (iv) a communication, requires you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and to the extent that the communication was not written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

9. “Arbitration” refers to the Joint Petition for Arbitration filed with the North Carolina Public Service Commission by NewSouth, KMC Telecom, and Xspedius.

10. “Testimony” means the Testimony of Joint Petitioners filed with the North Carolina Utilities Commission.

11. “Commission” means the North Carolina Utilities Commission.

12. The term “document” shall have the broadest possible meaning under applicable law. “Document” means every writing or record of every type and description that is in the possession, custody or control of Joint Petitioners, including, but not limited to, e-mails, correspondence, memoranda, drafts, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts,

including, but not limited to, electronic mail files, and copies of such writing or records containing any commentary or notation whatsoever that does not appear in the original.

INTERROGATORIES

1. Identify all persons by name, address, and employer participating in the preparation of the answers to these Interrogatories or supplying information used in connection therewith.
2. For each issue that you are identified as sponsoring in the Testimony, please identify all portions of the testimony by line and page number that you drafted or someone else drafted pursuant to your supervision. If someone else drafted your testimony, please identify that person.
3. Please provide the basis and identify all facts and/or documents that support your statement on Page 19 of the Testimony that "BellSouth's proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission's decision is unfavorable to it."
4. Please provide the basis and identify all facts and/or documents that support your statement on Page 21 of the Testimony that "this is a restrictive definition designed to serve some undefined and hereto fore undisclosed BellSouth motive."
5. Please provide the basis and identify all facts and/or documents that support your statement on Page 22 of the Testimony that "[f]or example, under BellSouth's proposed definition of 'End User,' it is arguable that certain types of CLP customers, such as Internet Service Providers ('ISPs'), might not be considered to be 'End Users.'"
6. Please provide the basis and identify all facts and/or documents that support your statement on Page 25 of the Testimony that "[c]ertain traffic passed to NewSouth by BellSouth over our Supergroups with a '0 CIC' would likely result in unbillable and uncollectible revenues." In providing a response, please identify the traffic at issue and all instances when such traffic actually resulted in unbillable and uncollectible revenues, identifying the amounts of any unbillable and uncollectible revenues.
7. Regarding Issue No. G-4, please identify all telecommunications interconnection agreements that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.

8. Regarding Issue No. G4, please identify all contracts that you have with your customers, end users, vendors, or other third-parties that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
9. Please provide the basis and identify all facts and/or documents that support your statement on Page 28 of the Testimony that “the standard liability-cap formulations – starting from a minimum (in some of the more conservative contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract – more universally appearing in commercial contracts.”
10. Please provide the basis and identify all facts and/or documents that support your statement on Page 28 of the Testimony that “[t]he Petitioners’ proposed risk-vs.-revenue trade off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well.” In responding to this interrogatory, please identify each and every contract and/or commercial transaction in “electric power, natural resources and public procurement” that support your testimony.
11. Please identify the “long-established principles of general contract law and equitable doctrines,” with appropriate legal citations that you are referring to on Page 28 of the Testimony.
12. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that “[i]n my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for non-performance or improper performance by the other party.” In responding to this interrogatory, please identify each and every “experience” you have had that supports your statement.
13. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that “a breach in the performance of services results in losses that are greater than their wholesale costs”
14. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that “these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers’ customer relationships as a likely consequence of any such breach.”

15. Regarding your statements on Page 29 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that the "breach in the performance of services results in losses that are greater than their wholesale costs."
16. Regarding your statements on Page 29 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that "losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach."
17. Please identify all end users or customers by name, working telephone number ("WTN") and date of loss that you lost as a result of any alleged breach of performance by BellSouth.
18. Regarding Issue No. G-5, please identify all of your tariffs and/or end user contracts that do not contain any limitation of liability language.
19. Please identify all limitation of liability language that exists in your tariffs and/or end user contracts.
20. Please identify all legal authority, with appropriate citation, that supports your statement on Page 31 of the Testimony that "a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement."
21. Please identify all instances where you have asked a customer or end user rejected your request to agree to liability provisions that are similar to BellSouth's liability provisions, as stated on Page 32 of the Testimony.
22. As to your statements on Page 32 of the Testimony, please identify every instance where you have "conceded" limitation of liability language to "attract customers in markets dominated by incumbent providers," including the name of the customer, the WTN, and date of contract evidencing any concession.
23. Please identify all facts, legal authority and/or documents that support your statement on Page 39 of the Testimony that "[a]s is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each." In responding to this interrogatory, please identify the specific "commercial-services" that you are referring to.

24. Please identify all indemnification language that exists in your tariffs and/or end user contracts.
25. Please identify, with appropriate legal citation, the "generally-accepted contract norms providing precisely to the contrary," that you are referring to on Page 40 of your Testimony.
26. Regarding Issue G-9, please identify all non Section 252 arbitration proceedings, by date and case-caption, initiated by you against BellSouth at a state public service commission to resolve a dispute between you and BellSouth.
27. Regarding your statement on Page 44 of the Testimony that "BellSouth often is able to force carriers into heavily discounted, non-litigated settlements," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to the carriers at issue, the amount of discount, the litigation that was settled, and how you became aware of each settlement.
28. Regarding your statement on Page 47 of the Testimony that "Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this principle of Georgia law," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying the "BellSouth-initiated litigation" by case-caption you are referring to and the principle of Georgia law (by legal citation) you are referring to.
29. Regarding your statement on Page 47 of the Testimony that "BellSouth's proposal attempts to turn universally accepted principles of contracting on their head," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to an identification of the "principles of contracting" (by legal citation) you are referring to.
30. Regarding Issue G-13, please identify all instances by date, carrier, and interconnection agreement where BellSouth has included a rate in the rate sheet of an interconnection agreement that is not the rate approved by the Commission, as set forth on Page 48 of the Testimony.
31. Regarding your statement on Page 53 of the Testimony that "[n]early all of the CLPs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying each "bad experience," the CLP

experiencing the “bad experience,” the date of the “bad experience,” and the reason for the “bad experience.”

32. Please explain in detail your statement on Pages 55-56 of the Testimony that “[g]iven the proliferation of the Guide references, accepting BellSouth’s language would severely undermine the integrity of the Agreement and, indeed, the entire Section 251/252 negotiation and arbitration process.”
33. Regarding Issue G-16, please identify all instances where you have determined that BellSouth tariff changes are “inconsistent with the Agreement, or are unreasonable or discriminatory” as set forth on Page 56 of the Testimony, describing in detail the tariff change at issue, the date of the tariff change, and the reason why you believed that the tariff change was inconsistent, unreasonable, or discriminatory.
34. Please identify the paragraphs of the Triennial Review Order (“TRO”) that support the following statements on Page 60 of your testimony wherein you state: “It is my understanding that the FCC concluded, in the TRO, that carriers may convert from UNEs and UNE Combinations to wholesale services and vice versa. It is also my understanding that the FCC concluded such conversions should be seamless and not affect any end-user customer’s service.”
35. Please provide the basis of and identify all facts and/or documents that support your statement on Page 62 of the Testimony that “converting a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services should not require substantial development and related costs.”
36. Please provide the basis of and identify all facts and/or documents that support your statement on Page 67 of the Testimony that retermination of circuits is “likely to be nothing more than a cross-connect.”
37. Please provide the basis of and identify all facts and/or documents that support your statement on Page 67 of the Testimony that “[t]he CLPs are not disconnecting a service but rather are rearranging a service that cannot be maintained as currently offered under the Agreement.”
38. Please identify the “FCC rules” you are referring to in the following statements on Page 69 of the Testimony:
 - a. “The FCC’s rules require that costs associated with Routine Network Modifications can and should be recovered by BellSouth as part of the expense associated with network investments, and therefore should already have been factored into BellSouth’s TELRIC costs.”

- b. "Indeed, the FCC's rules are very clear that there may not be any double recovery by BellSouth of Routine Network Modification costs by virtue of BellSouth recovering both the cost of the UNE and a new charge for Routine Network Modifications that already have been factored into the UNE rate."
 - c. "The FCC's rules are also very clear that the onus is on BellSouth affirmatively to demonstrate that a requested modification was not contemplated by BellSouth as a 'Routine Network Modification', and that the costs associated with the requested modification were not factored into BellSouth's TELRIC cost studies in any way whatsoever."
39. Please identify the FCC rules that you allege on Page 72 of the Testimony "do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs."
40. Please identify all legal authority that supports your statement on Page 72 of the Testimony that the "FCC has defined 'commingling' as the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services."
41. Please identify all legal authority that supports your statement on Page 72-73 of the Testimony that the "FCC has also concluded that Section 271 places requirements on BellSouth to provide network elements, services, and other offerings, and those obligations operate completely separate and apart from Section 251."
42. Please identify all legal authority that supports your statement on Page 73 of the Testimony that "[t]herefore, the FCC's rules unmistakably require BellSouth to allow Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to Section 271."
43. Please identify the paragraphs of the TRO that support your statement on Page 74 of the Testimony that "[i]t is my understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment."
44. Please provide the basis of and identify all facts and/or documents that support your statement on Page 76 of the Testimony that "[a] minimum billing period of 30 days, 2 months, etc. . . would carry with it exclusive use right thereby inhibiting a customer's ability to switch carriers as he or she wishes."

45. Regarding Issue 2-12 and your testimony on Page 77, please identify the paragraphs of the TRO that you are referring to when you state “[s]uch a provision would be inconsistent with the FCC’s Triennial TRO.”
46. Please identify the “issues” and the “reconsideration petition” by date and docket you are referring to on Page 78 of the Testimony, wherein you state: “BellSouth’s proposed language is clearly over-expansive and proposes to pre-decide issues currently before the FCC in at least one reconsideration petition.”
47. Please identify the specific rights to loop access and any legal support for these rights that you are referring to on Pages 78-79 of the Testimony, wherein you state: “Petitioners’ proposed language in Section 2.1.1.2 merely seeks to retain whatever rights CLPs presently enjoy with respect to loop access”
48. Please identify all legal support for your statement that CLPs have the right to “obtain a portion of loop bandwidth so that voice-grade services may be provided by one carrier and other services, such as xDSL-based transport services may be provided by another,” as set forth on Page 79 of the Testimony.
49. Please identify all legal support for your statement that “loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning,” as set forth on Page 80 of the Testimony.
50. Please identify all legal support for your statements that “FCC orders are presumed to become law, and affect substantive rights, on their effective dates. That legal truism does not have to be expressly stated in every FCC rule,” as set forth on Page 82 of the Testimony.
51. Please identify all legal authority, with appropriate citations, that supports your statement that “all facilities and work involved in provisioning, maintaining and repairing UNEs, including loops, must be priced at TELRIC-compliant rates,” as set forth on Page 83 of the Testimony.
52. Please provide the basis of and identify all facts and/or documents that support your statement on Page 85 of the Testimony that “dispatch charges significantly undercut Petitioners’ ability to compete effectively.”
53. Please identify all customers or end users by name, WTN, and date of loss that you were unable to obtain or lost or were unable to acquire because of dispatch charges.

54. Please identify all dispatch charges that you charge your end users or customers.
55. Please identify when you are planning to deploy or use "Etherloop" or "G.HDSL Long" technologies, as described on Page 92 of the Testimony.
56. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 93 of the Testimony that "Federal law provides, without limitation, that CLPs may request this type of Line Conditioning, insofar as they pay for the work required based on TERLIC-compliant [sic] rates."
57. Please identify all legal authority, with appropriate citations, that supports your statement on Page 98 of the Testimony that "the manner in which UNE loops are provisioned, and whether they are usable for CLP service, is squarely within the parameters of Section 251."
58. Please identify all legal authority, with appropriate citations, that supports your statement on Page 98 of the Testimony that "loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning."
59. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 99-100 of the Testimony that "the FCC has already found, on a nationwide basis, that CLPs should not be made to build new NIDs."
60. Regarding Issue 2-23(D), please identify any and all of the steps, measures, protections, procedures or other processes that you would use to access an "available pair."
61. Regarding Issue 2-24, please identify all instances by date, time, location and WTN, where you have determined that testing of the loop at a place other than the distribution frame and at the end user's premises was required to "detect and pinpoint a problem," as set forth on Page 106 of the Testimony.
62. Please identify all legal authority, with appropriate citations, that supports your statement on Page 106 of the Testimony that federal law "imposes no limitation on a CLP's right to test loops – both lit and dark fiber loops – at any technical feasible point."
63. Please identify all legal authority, with appropriate citations, that supports your statements on Page 107 of the Testimony that "Petitioners will be paying BellSouth for these loops, and should be permitted to do whatever testing is necessary to ensure that they work."

64. Please identify all legal authority, with appropriate citations, that supports your statements on Page 108 of the Testimony that “[t]he law does not require an LOA from a third party carriers [sic].”
65. Regarding Issue 2-28(A) please describe in detail your understanding of “DSL transport” or “DSL service” as used on Page 111 of the Testimony.
66. Please identify all legal authority, with appropriate citations, that supports your statement on Page 117 of the Testimony that “[t]he FCC has concluded that such pre-audits constitute an unjust, unreasonable and discriminatory term and condition for obtaining access to UNE combinations and are prohibited.”
67. Please provide the basis of and identify all facts and/or documents that support your statement on Page 118 of the Testimony that “BellSouth’s conversions of special access to EELs have resulted in damages of approximately \$1.6 million.”
68. Please describe in detail how you calculated the \$1.6 million in damages described on Page 118 of the Testimony.
69. Please identify all FCC or state commission rules or orders that support your position that BellSouth should only be able to perform an EELs audit for cause as set forth on Page 121 of the Testimony.
70. Please identify all telecommunications interconnection agreements that have identical or similar language for EELs audits that you are proposing in this proceeding.
71. Please provide a detailed explanation of what you mean by the “concept of materiality,” as set forth on Page 124 of the Testimony, providing in detail, examples of when noncompliance would and would not be material.
72. Please identify all interconnection agreements that include the “concept of materiality” for EELs audits.
73. Please identify every instance of “controversy” regarding EELs audits by date, carrier, how each controversy was resolved that support your Testimony on Page 125, wherein you state: “Given the history of controversy that has surrounded BellSouth’s EEL audits, the Petitioners understandably have genuine concerns about the legitimacy of BellSouth’s EEL audits.”
74. Please identify all legal authority, with appropriate citations, that supports your statement on Page 128 of the Testimony that “FCC’s rules require that BellSouth provide nondiscriminatory access to the dark fiber transport UNE at any technically feasible point, including access for purposes of conducting splicing and testing activities.”

75. Please identify all legal authority, with appropriate citations, that supports your statement on Page 131 of the Testimony that BellSouth has a "CNAM unbundling obligation."
76. Identify all instances where you lost an end user and that end user returned to BellSouth or where you were unable to acquire an end user because "caller ID does not appear," as set forth on Page 131 of the Testimony. In responding to this request, please identify the customer name, date, and WTN for each end user.
77. Identify all instances when BellSouth mischarged you "for a Local Channel when an intra-office cabling scheme is used to connect [your] point-of-presence to the BellSouth switch," as set forth on Page 135 of the Testimony.
78. Please identify any and all outages that you consider to be a "global outage" for purposes of this agreement.
79. Please identify all instances in which BellSouth provided a root cause analysis to you.
80. Please identify every instance and all documents that your support your Testimony on Page 140 that you have experienced a global outage involving an entire trunk group. In responding to this request, please identify each outage by date, WTNs affected, location of outage, the trunk groups affected, how long the outage existed, the reason for the outage, and whether BellSouth provided a root cause analysis for the outage.
81. Please identify all instances and any documents that relate, address, apply or refer to the use of a root cause analysis to respond to customer inquiries regarding service outages or otherwise.
82. Please identify all documents that relate, address, apply, or refer to any policies you have regarding advising customers as to service problems, "the steps taken to repair and avoid their recurrence in the future," as set forth on Page 141 of the Testimony.
83. Regarding Issue 3-3, please identify all documents, including but not limited to contracts, tariffs, policies statements, and training manuals, that address, relate, pertain, or refer to the backbilling of customers.
84. Please identify all instances where you were unable to bill a customer or end user after 90 days. In responding to this request, please identify each instance by date, customer name, WTNs, and amount of charges that you were unable to bill.

85. Please provide the basis of and identify all facts and/or documents that support your statement on Page 145 of the Testimony that "there is a potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLPs, for unjust termination charges."
86. Please identify all instances where BellSouth paid third parties without carefully scrutinizing its bills and then attempted to charge CLPs for these "unjustified termination charges," as set forth on Page 145 of the Testimony. In responding to this request, please identify each instance by date, third party, WTNs, CLP that was asked to pay the "unjust termination charges," the amount of said charges, and whether the CLP disputed these charges.
87. Please identify all instances where BellSouth paid "third parties even when it has no contractual or other legal obligation to do so," as set forth on Page 145 of the Testimony.
88. Please provide the basis of and identify all facts and/or documents that support your statement on Page 147 of the Testimony that "[b]ecause factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison."
89. Please provide the basis of and identify all facts and/or documents that support your statement on Page 148 of the Testimony that "BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power."
90. Please identify all legal authority, with appropriate citations, that supports your statement on Page 150 of the Testimony that "[t]ransiting is an interconnection issue firmly ensconced in Section 251 of the Act."
91. Please identify all legal authority, with appropriate citations, that supports your statement on Page 157 of the Testimony that "[t]he FCC has held that obligations imposed by Section 251(c)(2) and 251(c)(3) include 'modifications to incumbent LECs facilities to the extent necessary to accommodate interconnection or access to network elements.'"
92. Please state whether you have installed the "appropriate hardware" in your switches to allow for OCn interconnection, as alleged on Page 158 of the Testimony.
93. Please identify all legal authority, with appropriate citations, that supports your statement on Page 163 of the Testimony that "[t]o the extent the Parties are carrying non-transit and non-interLATA Switched Access Traffic, the

parties should proportionally split the recurring charges for trunks and associated facilities.”

94. Please identify what percentage of your traffic consists of “non-transit and non-interLATA Switched Access Traffic.”
95. Regarding your Testimony on Page 166, please identify all instances where, after collocating in a BellSouth premise, you have been unable to “gain access to loops, transport, multiplexers, switch ports, optical terminations and the like” by date, central office, and specific equipment you were unable to access.
96. Please identify all legal authority, with appropriate citations, that support your statement on Page 191 of the Testimony that BellSouth is required by federal law to provide subscribers payment history in a CSR.
97. Regarding your testimony on Page 192 of the Testimony that certain Commissions have “already determined” that BellSouth must include subscriber payment history in a CSR, please identify the Commissions you are referring to, the docket in which a Commission made such a finding, and the date of any such finding.
98. Regarding Issue 6-2, for the last 12 months, please provide, on a monthly basis, the number of CSRs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
99. Regarding Issue 6-4, please identify all products and/or services that you have actually ordered or wish to order from BellSouth that you contend cannot be ordered electronically.
100. For each such product or service identified in Interrogatory No. 98, please provide on a monthly basis the number of Local Service Requests (“LSRs”) that you submitted to BellSouth for each product and/or service for the last 12 months.
101. Please provide the basis of and identify all facts and/or documents that support your statement on Page 201 of the Testimony that “NewSouth’s experience has been that a significant amount (we currently estimate 25%) of NewSouth’s facility orders have to be submitted manually because of address validation errors” and that “NewSouth has found BellSouth to be delinquent in updated address records.”
102. Please identify all legal authority, with appropriate citations, that support your position on Page 202 of the Testimony that Service Date Advancements should be charged at TELRIC pricing standard.

103. Regarding Issue 6-6, for the last 12 months, please provide, on a monthly basis, the number of FOCs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a FOC and the date you provided the FOC to BellSouth.
104. Regarding Issue 6-7, for the last 12 months, please provide, on a monthly basis, the number of Reject Responses you provided to BellSouth and the number of business days that elapsed on average between the date of a request for a Reject Response and the date you provided the Reject Response to BellSouth.
105. Please identify all legal authority, with appropriate citations, that supports your position on Pages 208-209 of the Testimony that BellSouth is obligated under federal law to provide performance and maintenance history for circuits.
106. Regarding your statements on Pages 211-212 of your Testimony, please identify (1) all efforts you have undertaken to develop your own OSS systems, (2) the expected completion of your own OSS systems; and (3) all components of your own OSS that remain to be completed
107. Please identify all documents that relate, address, apply, or refer the development of your own OSS.
108. Please identify all legal authority, with appropriate citations, that support your statements on Page 212 of the Testimony that "BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between a Petitioner and BellSouth Long Distance or another third party carrier."
109. Please identify all end users you lost or were unable to acquire, by name, WTN, and date of loss, as a result of a requirement that the porting of the end user or customer to the CLP is contingent on either the CLP having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the customer or End User changing its PIC.
110. Please identify all long distance carriers that you do not have an operating, billing, and/or collection arrangement with.
111. Please provide the basis of and identify all facts and/or documents that support your statement on Page 216 of the Testimony that "mass migrations at most amount to bulk porting situations. . . ."

112. Regarding your statement on Page 217 of the Testimony that “[t]oo many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner,” please identify (1) the specific obstacles you are referring to; (2) the carriers attempting to perform the mass migration; and (3) the location of the customer base that was migrated or was attempted to be migrated.
113. Please identify all legal authority, with appropriate citations, that supports your position on Page 218 that mass migration services should be priced at TELRIC.
114. Please identify the specific steps and processes that you believe are needed to perform mass migration of customers.
115. Please identify all documents that relate, address, apply, or refer to your allegations on Pages 218-219 of the Testimony that Xspedius once attempted “to accomplish mass migration of several special access circuits to UNE loops.”
116. Please identify all instances in which you have billed BellSouth or another carrier for services rendered more than 90 days after the bill date on which those charges ordinarily would have been billed.
117. Please identify all charges that would not be subject to the exemptions to the 90 day backbilling prohibition you testify about on Page 222 of the Testimony.
118. Please provide the basis of and identify all facts and/or documents that support your statement on Page 229 of the Testimony that “[i]t is my understanding that the BFR/BNR process is a lengthy, expensive and typically unsatisfactory process.”
119. Please identify all instances where you have used the BFR/BNR process with BellSouth.

Respectfully submitted, this 1st day of June, 2004.

A handwritten signature in black ink, appearing to read "Edward L. Rankin, III", written over a horizontal line.

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ATTORNEYS FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing First Set of Interrogatories on parties of record by email this 1st day of June, 2004.

Dorothy Black

538823

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,	)	Docket No. P-772, Sub 8
NuVox Communications, Inc.	)	Docket No. P-913, Sub 5
KMC Telecom V, Inc., KMC Telecom III LLC, and	)	Docket No. P-989, Sub 3
Xspedius Communications, LLC on Behalf of its	)	Docket No. P-824, Sub 6
Operating Subsidiary Xspedius Management Co.	)	Docket No. P-1202, Sub 4
Switched Services, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO JOINT PETITIONERS

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests that NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III, LLC, NuVox Communications, Inc., and Xspedius Communications, LLC ("CLPs" or "Joint Petitioners") furnish responses to the following Requests for Production in the manner and within the timeframe prescribed by the North Carolina Utilities Commission ("Commission").

STATEMENT OF NECESSITY

The following Requests for Production seek discovery that is necessary for BellSouth to present its case to the Commission. The overwhelming majority of the Requests for Production directly relate to statements made or positions asserted in the Joint Petitioners' Direct Testimony, which consists of 260 Pages, addresses approximately 85 issues, and is adopted and supported by multiple witnesses in toto. BellSouth must obtain responses to this discovery in order for it to defend itself and prosecute its positions in the arbitration proceeding before the Commission.

INSTRUCTIONS

1. If any response required by way of answer to these Requests for Production is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.
2. If any response required by way of answer to these Requests for Production is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.
3. These Requests for Production are to be answered with reference to all information in your possession, custody or control or reasonably available to you.
4. If any Request for Production cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully.
5. If you object to any part of a Request for Production, answer all parts of the Request for Production to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.
6. These Requests for Production are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these Requests for Production subsequently become known or should your initial response be incorrect or untrue.
7. Each Petitioner should provide a response to each Request for Production.

DEFINITIONS

1. “NewSouth” means NewSouth Communications Corp. any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of New South.
2. “KMC Telecom” means KMC Telecom V, Inc. and KMC Telecom III LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of KMC Telecom.
3. “NuVox” means NuVox Communications, Inc., any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of NuVox.
4. “Xspedius” means Xspedius Communications, LLC on Behalf of its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Birmingham, LLC, Xspedius Management Co. of Mobile, LLC, and Xspedius Management Co. of Montgomery, LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Xspedius.
5. “Joint Petitioners” means NewSouth, KMC Telecom, NuVox and Xspedius.
6. “You” and “your” refers to Joint Petitioners collectively.
7. “Person” means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

8. "And" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Requests for Production information that would not otherwise be brought within their scope.

9. "Identification" or "identify" when used in reference to: (i) a natural individual, requires you to state his or her full name and residential and business address; (ii) a corporation, requires you to state its full corporate name and any names under which it does business, the state of incorporation, and the address of its principal place of business; (iii) a document, requires you to state the number of Pages and the nature of the document (e.g., a letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location or custodian; (iv) a communication, requires you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and to the extent that the communication was not written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

10. "Arbitration" refers to the Joint Petition for Arbitration filed with the North Carolina Utilities Commission by NewSouth, NuVox, KMC Telecom, and Xspedius.

11. "Testimony" means the Testimony of Joint Petitioners filed with the North Carolina Utilities Commission.

12. "Commission" means the North Carolina Utilities Commission.

13. The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of Joint Petitioners, including, but not limited to, e-mails, correspondence, memoranda, drafts, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations,

computer and other electronic records or tapes or printouts, including, but not limited to, electronic mail files, and copies of such writing or records containing any commentary or notation whatsoever that does not appear in the original.

REQUESTS FOR PRODUCTION

1. Please produce all documents that you reference, describe or identify in responding to BellSouth's First Set of Interrogatories.
2. Please produce all documents that support, refer, relate, or pertain to your statement on Page 15 of the Testimony that "BellSouth's proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission's decision is unfavorable to it."
3. Please produce all documents that support, refer, relate, or pertain to your statement on Page 21 of the Testimony that "this is a restrictive definition designed to serve some undisclosed BellSouth motive."
4. Please produce all documents that support, refer, relate, or pertain to your statement on Page 22 of the Testimony that "[f]or example, under BellSouth's proposed definition of 'End User,' it is arguable that certain types of CLP customers, such as Internet Service Providers ('ISPs'), might not be considered to be 'End Users.'"
5. Please produce all documents that support, refer, relate, or pertain to your statement on Page 25 of the Testimony that "[c]ertain traffic passed to NewSouth by BellSouth over our Supergroups with a '0 CIC' would likely result in unbillable and uncollectible revenues."
6. Regarding Issue No. G-4, please produce all telecommunications interconnection agreements that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
7. Regarding Issue No. G-4, please produce all contracts or tariffs that you have with your customers, end users, vendors, or other third-parties that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
8. Please produce all documents that support, refer, relate, or pertain to your statement on Pages 28 of the Testimony that "the standard liability-cap formulations – starting from a minimum (in some of the more conservative contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract – more universally appearing in commercial contracts."

9. Please produce all documents that support, refer, relate, or pertain to your statement on Page 28 of the Testimony that "[t]he Petitioners' proposed risk-vs.-revenue trade off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well."
10. Please produce all documents that support, refer, relate, or pertain to your statement on Page 29 of the Testimony that "[i]n my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for non-performance or improper performance by the other party."
11. Please produce all documents that support, refer, relate, or pertain to your statement on Page 29 of the Testimony that "a breach in the performance of services results in losses that are greater than their wholesale costs"
12. Please produce all documents that support, refer, relate, or pertain to your statements on Page 29 of the Testimony that "losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach."
13. Please produce all documents that support, refer, relate, or pertain to the loss of any end user or customer as a result of any alleged breach of performance by BellSouth.
14. Regarding Issue No. G-5, please produce all of your tariffs and/or end user contracts that do not contain any limitation of liability language.
15. Please produce all documents that support, refer, relate, or pertain to the inclusion of limitation of liability language in your tariffs and/or end user contracts.
16. Please produce your tariffs and/or end user contracts that include limitation of liability language.
17. Please produce all documents that support, refer, relate, or pertain to any instance where a customer or end user rejected your request that he/she/it agree to liability provisions that are similar to BellSouth's liability provisions, as stated on Page 32 of the Testimony.
18. Regarding your statements on Page 32 of the Testimony, please produce all documents that support, refer, relate, or pertain to any instance where you have conceded limitation of liability language to "attract customers in markets dominated by incumbent providers."

19. Please produce all documents that support, refer, relate, or pertain to statement on Page 39 of the Testimony that “[a]s is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each.”
20. Please produce all of your tariffs and/or end user contracts that contain indemnification language.
21. Please produce all documents that support, refer, relate, or pertain to your statement on Page 44 of the Testimony that “BellSouth often is able to force carriers into heavily discounted, non-litigated settlements.”
22. Please produce all documents that support, refer, relate, or pertain to any instance where BellSouth included a rate in the rate sheet of an interconnection agreement that is not the rate approved by the Commission, as set forth on Page 498 of the Testimony.
23. Please produce all documents that support, refer, relate, or pertain to your statement on Page 53 of the Testimony that “[n]early all of the CLPs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement.”
24. Please produce all documents that support, refer, relate, or pertain to your statement on Page 56 of the Testimony that BellSouth’s tariff changes are “inconsistent with the Agreement, or are unreasonable or discriminatory. . . .”
25. Please produce all documents that support, refer, relate, or pertain to your statement on Page 67 of the Testimony that retermination of circuits is “likely to be nothing more than a cross-connect.”
26. Please produce all documents that support, refer, relate, or pertain to your statement on Page 67 of the Testimony that “[t]he CLPs are not disconnecting a service but rather are rearranging a service that cannot be maintained as currently offered under the Agreement.”
27. Please produce all documents that support, refer, relate, or pertain to your statement on Page 76 of the Testimony that “[a] minimum billing period of 30 days, 2 months, etc. . . would carry with it exclusive use right thereby inhibiting a customer’s ability to switch carriers as he or she wishes.”
28. Please produce all documents that support, refer, relate, or pertain to your statement on Page 85 of the Testimony that “dispatch charges significantly undercut Petitioners’ ability to compete effectively.”

29. Please produce all documents that support, refer, relate, or pertain to the loss of or failure to acquire any end user or customer because of dispatch charges.
30. Please produce all documents that support, refer, relate, or pertain to the dispatch charges that you charge your end users or customers.
31. Please produce all documents that support, refer, relate, or pertain to your plans to deploy or use "Etherloop" or "G.HDSL Long" technologies, as described on Page 92 of the Testimony.
32. Regarding Issue 2-23(D), please produce all documents that support, refer, relate, or pertain to the steps, measures, protections, procedures or other processes that you would use to access an "available pair."
33. Please produce all telecommunications interconnection agreements that have identical or similar language for EELs audits that you are proposing in this proceeding.
34. Please produce all documents that support, refer, relate, or pertain your statements on Page 125 of the Testimony that "[g]iven the history of controversy that has surrounded BellSouth's EEL audits, the Petitioners understandably have genuine concerns about the legitimacy of BellSouth's EEL audits."
35. Please produce all documents that support, refer, relate, or pertain to any instance where you lost or were unable to acquire an end user or customer because "caller ID does not appear," as set forth on Page 131 of the Testimony.
36. Please produce all documents that support, refer, relate, or pertain to any instance where you have been "mischarged for a Local Channel when an intra-office cabling scheme is used to connect their point-of-presence to the BellSouth switch," as set forth on Page 135 of the Testimony.
37. Please produce all documents that support, refer, relate, or pertain to all instances in which BellSouth provided a root cause analysis to you.
38. Please produce all documents that support, refer, relate, or pertain to your Testimony on Page 130-140 that you have experienced a global outage involving an entire trunk group.
39. Please produce all documents that support, refer, relate, or pertain to your use of a root cause analysis to respond to customer inquiries regarding service outages or otherwise.
40. Please produce all documents that support, refer, relate, or pertain to any policies you have regarding trunk group outages or other service outages, the advising customers as to service problems, "the steps taken to repair them and avoid their recurrence in the future," as set forth on Page 141 of the Testimony.

41. Regarding Issue 3-3, please produce all documents, including but not limited to contracts, tariffs, policies, statements, and training manuals, that address, relate, pertain, or refer to the backbilling of customers.
42. Please produce all documents that support, refer, relate, or pertain to any instance where you were unable to bill a customer or end user after 90 days.
43. Please produce all documents that support, refer, relate, or pertain to your statement on Page 145 of the Testimony that "there is a potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLPs, for unjust termination charges."
44. Please produce all documents that support, refer, relate, or pertain to any instance where BellSouth paid third parties without carefully scrutinizing its bills and then attempted to charge CLPs for these "unjustified termination charges," as set forth on Page 145 of the Testimony.
45. Please produce all documents that support, refer, relate, or pertain to any instance where BellSouth paid "third parties even when it has no contractual or other legal obligation to do so," as set forth on Page 145-146 of the Testimony.
46. Please produce all documents that support, refer, relate, or pertain to your statement on Page 147 of the Testimony that "[b]ecause factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison."
47. Please produce all documents that support, refer, relate, or pertain to your statement on Page 148 of the Testimony that "BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power."
48. Please produce all documents that support, refer, relate, or pertain to your statement on Page 163 of the Testimony that "[t]o the extent the Parties are carrying non-transit and non-interLATA Switched Access Traffic, the parties should proportionally split the recurring charges for trunks and associated facilities."
49. Please produce all documents that support, refer, relate, or pertain to the percentage of your traffic that consists of "non-transit and non-interLATA Switched Access Traffic."
50. Regarding your Testimony on Page 166, please produce all documents that support, refer, relate, or pertain to any instance where, after collocating in a BellSouth premise, you have been unable to "gain access to loops, transport, multiplexers, switch ports, optical terminations and the like."

51. Regarding Issue 6-2, please produce for the last 12 months all documents that support, refer, relate, or pertain to the number of CSRs you provided to BellSouth and the number of business days that elapsed between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
52. Regarding Issue 6-4, please produce all documents that support, refer, relate, or pertain to any products and/or services that you have actually ordered or wish to order from BellSouth that you contend cannot be ordered electronically.
53. For each such product or service identified in Request for Production No. 54, please produce all Local Service Requests ("LSRs") that you submitted to BellSouth for the last 12 months.
54. Please produce all documents that support, refer, relate, or pertain to your statement on Page 201 of the Testimony that "NewSouth's experience has been that a significant amount (we currently estimate 25%) of NewSouth's facility orders have to be submitted manually because of address validation errors" and that "NewSouth has found BellSouth to be delinquent in updated address records."
55. Regarding your Testimony on Page 201, please produce all LSRs that NewSouth had to submit manually because of address validation errors.
56. Regarding Issue 6-6, please produce for the last 12 months all documents that support, refer, relate, or pertain to the number of CSRs you provided to BellSouth and the number of business days that elapsed between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
57. Regarding Issue 6-7, please produce for the last 12 months all documents that support, refer, relate, or pertain to the number of CSRs you provided to BellSouth and the number of business days that elapsed between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
58. Regarding your statements on Page 211-212 of your Testimony, please produce all documents that support, refer, relate, or pertain to any efforts you have undertaken to develop your own OSS.
59. Please produce all documents that support, refer, relate, or pertain to any instance where you lost or were unable to acquire an end user or customer as a result of a requirement that the porting of the end user or customer to the CLP is contingent on either the CLP having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the customer or End User changing its PIC.
60. Regarding Issue 6-10, please produce all documents that support, refer, relate, or pertain to your statement on Page 216 of the Testimony that "mass migrations at most amount to bulk porting situations. . . ."

61. Please produce all documents that support, refer, relate, or pertain to your statement on Page 217 of the Testimony that “[t]oo many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner.”
62. Please produce all documents that support, refer, relate, or pertain to the specific steps and processes that you believe are needed to perform mass migration of customers.
63. Please produce all documents that relate, address, apply, or refer to your allegations on Page 218 of the Testimony that Xspedius once attempted “to accomplish mass migration of several special access circuits to UNE loops.”
64. Regarding Issue 7-1, please produce all documents that support, refer, relate, or pertain to any instance in which you have billed BellSouth, another carrier, or end user for services rendered more than 90 days after the bill date on which those charges ordinarily would have been billed.
65. Please produce any tariffs or contracts that address, relate, refer or pertain to the backbilling of services rendered.
66. Please produce all documents that support, refer, relate, or pertain to your statement on Page 229 of the Testimony that “[i]t is my understanding that the BFR/BNR process is a lengthy, expensive and typically unsatisfactory process.”
67. Please identify all instances where you have used the BFR/BNR process with BellSouth.
68. Produce all tariff provisions and/or end user contract provisions of the Joint Petitioners that relate, address, refer or pertain to late payment charges and applicable interest rate(s) for late payments.
69. Produce all tariff provisions and/or end user contract provisions of the Joint Petitioners that relate, address, refer or pertain to the time period in which a customer must make a claim regarding any alleged billing errors.
70. Produce all tariff provisions and/or end user contract provisions of the Joint Petitioners that relate, address, refer or pertain to customer deposit requirements.
71. Produce all tariff provisions and/or end user contract provisions of the Joint Petitioners that relate, address, refer or pertain to the Joint Petitioners’ right to terminate service.
72. Produce all tariff provisions and/or end user contract provisions of the Joint Petitioners that relate, address, refer or pertain to any minimum service period.

Respectfully submitted this 28th day of May, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

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539698

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties by email, fax, and/or hand delivery this 28th day of May, 2004.

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,	)	Docket No. 29242
KMC Telecom V, Inc., KMC Telecom III LLC, and)	
Xspedius Communications, LLC on Behalf of its)	
Operating Subsidiaries Xspedius Management Co.)	
Switched Services, LLC, Xspedius Management Co.)	
Of Birmingham, LLC, Xspedius Management Co.)	
Of Mobile, LLC, and Xspedius Management Co.)	
Of Montgomery, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	
)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO JOINT PETITIONERS**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rules T-26(A)(2)(g) and (B)(2)(f) of the Telephone Rules of the Alabama Public Service Commission ("Commission"), hereby requests NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC ("CLECs" or "Joint Petitioners") to furnish responses to the following Requests for Production by June 10, 2004.

STATEMENT OF NECESSITY

The following Requests for Production seek discovery that is necessary for BellSouth to present its case to the Commission. The overwhelming majority of the Requests for Production directly relate to statements made or positions asserted in the Joint Petitioners' Direct Testimony, which consists of over 240 Pages, addresses

approximately 85 issues, and is adopted and supported by multiple witnesses in toto. BellSouth must obtain responses to this discovery in order for it to defend itself and prosecute its positions in the arbitration proceeding before the Commission.

INSTRUCTIONS

1. If any response required by way of answer to these Requests for Production is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.

2. If any response required by way of answer to these Requests for Production is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.

3. These Requests for Production are to be answered with reference to all information in your possession, custody or control or reasonably available to you.

4. If any Request for Production cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully.

5. If you object to any part of a Request for Production, answer all parts of the Request for Production to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

6. These Requests for Production are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these Requests for Production subsequently become known or should your initial response be incorrect or untrue.

7. Each Petitioner should provide a response to each Request for Production.

DEFINITIONS

1. “NewSouth” means NewSouth Communications Corp. any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of New South.

2. “KMC Telecom” means KMC Telecom V, Inc. and KMC Telecom III LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of KMC Telecom.

3. “Xspedius” means Xspedius Communications, LLC on Behalf of its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Birmingham, LLC, Xspedius Management Co. of Mobile, LLC, and Xspedius Management Co. of Montgomery, LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Xspedius.

4. “Joint Petitioners” means NewSouth, KMC Telecom, and Xspedius.

5. “You” and “your” refers to Joint Petitioners collectively.

6. “Person” means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

7. “And” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Requests for Production information that would not otherwise be brought within their scope.

8. "Identification" or "identify" when used in reference to: (i) a natural individual, requires you to state his or her full name and residential and business address; (ii) a corporation, requires you to state its full corporate name and any names under which it does business, the state of incorporation, and the address of its principal place of business; (iii) a document, requires you to state the number of Pages and the nature of the document (e.g., a letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location or custodian; (iv) a communication, requires you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and to the extent that the communication was not written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

9. "Arbitration" refers to the Joint Petition for Arbitration filed with the Alabama Public Service Commission by NewSouth, KMC Telecom, and Xspedius.

10. "Testimony" means the Testimony of Joint Petitioners filed with the Alabama Public Service Commission.

11. "Commission" means the Florida Public Service Commission.

12. The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of Joint Petitioners, including, but not limited to, e-mails, correspondence, memoranda, drafts, work papers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts,

including, but not limited to, electronic mail files, and copies of such writing or records containing any commentary or notation whatsoever that does not appear in the original.

REQUESTS FOR PRODUCTION

1. Please produce all documents that support, refer, relate, or pertain to your statement on Page 15 of the Testimony that “BellSouth’s proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission’s decision is unfavorable to it.”
2. Please produce all documents that support, refer, relate, or pertain to your statement on Page 17 of the Testimony that “[o]bviously, this is a restrictive definition designed to serve some undefined and hereto fore undisclosed BellSouth motive.”
3. Please produce all documents that support, refer, relate, or pertain to your statement on Page 17 of the Testimony that “[f]or example, under BellSouth’s proposed definition of ‘End User,’ it is arguable that certain types of CLEC customers, such as Internet Service Providers (“ISPs”), might not be considered to be ‘End Users.’”
4. Please produce all documents that support, refer, relate, or pertain to your statement on Page 20 of the Testimony that “[c]ertain traffic passed to NewSouth by BellSouth over our Supergroups with a ‘0 CIC’ would likely result in unbillable and uncollectible revenues.”
5. Regarding Issue No. G-4, please produce all telecommunications interconnection agreements that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
6. Regarding Issue No. 6-4, please produce all contracts or tariffs that you have with your customers, end users, vendors, or other third-parties that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
7. Please produce all documents that support, refer, relate, or pertain to your statement on Pages 23-24 of the Testimony that “the standard liability-cap formulations – starting from a minimum (in some of the more conservative contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract – more universally appearing in commercial contracts.”

8. Please produce all documents that support, refer, relate, or pertain to your statement on Page 24 of the Testimony that “[t]he Petitioners’ proposed risk-vs.-revenue trade off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well.”
9. Please produce all documents that support, refer, relate, or pertain to your statement on Page 24 of the Testimony that “[i]n my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for non-performance or improper performance by the other party.”
10. Please produce all documents that support, refer, relate, or pertain to your statement on Page 25 of the Testimony that “a breach in the performance of services results in losses that are greater than their wholesale costs”
11. Please produce all documents that support, refer, relate, or pertain to your statement on Page 25 of the Testimony that “these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers’ customer relationships as a likely consequence of any such breach.”
12. Please produce all documents that support, refer, relate, or pertain to your statements on Page 25 of the Testimony that the “breach in the performance of services results in losses that are greater than their wholesale costs.”
13. Please produce all documents that support, refer, relate, or pertain to your statements on Page 25 of the Testimony that “losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers’ customer relationships as a likely consequence of any such breach.”
14. Please produce all documents that support, refer, relate, or pertain to the loss of any end user or customer as a result of any alleged breach of performance by BellSouth.
15. Regarding Issue No. G-5, please produce all of your tariffs and/or end user contracts that do not contain any limitation of liability language.
16. Please produce all documents that support, refer, relate, or pertain to the inclusion of limitation of liability language in your tariffs and/or end user contracts.

17. Please produce your tariffs and/or end user contracts that include limitation of liability language.
18. Please produce all documents that support, refer, relate, or pertain to any instance where a customer or end user rejected your request that he/she/it agree to liability provisions that are similar to BellSouth's liability provisions, as stated on Page 28 of the Testimony.
19. Regarding your statements on Page 28 of the Testimony, please produce all documents that support, refer, relate, or pertain to any instance where you have "conceded" limitation of liability language to "attract customers in markets dominated by incumbent providers."
20. Please produce all documents that support, refer, relate, or pertain to statement on Page 34 of the Testimony that "[a]s is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each."
21. Please produce all of your tariffs and/or end user contracts that contain indemnification language.
22. Please produce all documents that support, refer, relate, or pertain to your statement on Page 39 of the Testimony that "BellSouth often is able to force carriers into heavily discounted, non-litigated settlements."
23. Please produce all documents that support, refer, relate, or pertain to any instance where BellSouth included a rate in the rate sheet of an interconnection agreement that is not the rate approved by the Commission, as set forth on Page 43 of the Testimony.
24. Please produce all documents that support, refer, relate, or pertain to your statement on Page 47 of the Testimony that "[n]early all of the CLECs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement."
25. Please produce all documents that support, refer, relate, or pertain to your statement on Page 50 of the Testimony that BellSouth's tariff changes are "inconsistent with the Agreement, or are unreasonable or discriminatory."
26. Please produce all documents that support, refer, relate, or pertain to your statement on Page 60 of the Testimony that retermination of circuits is "likely to be nothing more than a cross-connect."

27. Please produce all documents that support, refer, relate, or pertain to your statement on Page 60 of the Testimony that "[t]he CLECs are not disconnecting a service but rather are rearranging a service that cannot be maintained as currently offered under the Agreement."
28. Please produce all documents that support, refer, relate, or pertain to your statement on Page 69 of the Testimony that "[a] minimum billing period of 30 days, 2 months, etc. . . would carry with it exclusive use right thereby inhibiting a customer's ability to switch carriers as he or she wishes."
29. Please produce all documents that support, refer, relate, or pertain to your statement on Page 77 of the Testimony that "dispatch charges significantly undercut Petitioners' ability to compete effectively."
30. Please produce all documents that support, refer, relate, or pertain to the loss of or failure to acquire any end user or customer because of dispatch charges.
31. Please produce all documents that support, refer, relate, or pertain to the dispatch charges that you charge your end users or customers.
32. Please produce all documents that support, refer, relate, or pertain to your plans to deploy or use "Etherloop" or "G.HDSL Long" technologies, as described on Page 84 of the Testimony.
33. Regarding Issue 2-23(D), please produce all documents that support, refer, relate, or pertain to the steps, measures, protections, procedures or other processes that you would use to access an "available pair."
34. Regarding Issue 2-24, please produce all documents that support, refer, relate, or pertain to any instance where you have determined that testing of the loop at a place other than the distribution frame and at the end user's premises was required to "detect and pinpoint a problem," as set forth on Page 97 of the Testimony.
35. Please produce all documents that support, refer, relate, or pertain to your statement on Page 108 of the Testimony that "BellSouth's conversions of special access to EELs have resulted in damages of approximately \$1.6 million."
36. Please produce all telecommunications interconnection agreements that have identical or similar language for EELs audits that you are proposing in this proceeding.
37. Please produce all documents that support, refer, relate, or pertain your statements on Page 114 of the Testimony that "[g]iven the history of controversy that has surrounded BellSouth's EEL audits, the Petitioners

understandably have genuine concerns about the legitimacy of BellSouth's EEL audits."

38. Please produce all documents that support, refer, relate, or pertain to any instance where you lost or were unable to acquire an end user or customer because "caller ID does not appear," as set forth on Page 120 of the Testimony.
39. Please produce all documents that support, refer, relate, or pertain to any instance where you have been "mischarged for a Local Channel when an intra-office cabling scheme is used to connect their point-of-presence to the BellSouth switch," as set forth on Page 124 of the Testimony.
40. Please produce all documents that support, refer, relate, or pertain to all instances in which BellSouth provided a root cause analysis to you.
41. Please produce all documents that support, refer, relate, or pertain to your Testimony on Page 128 that you have experienced a global outage involving an entire trunk group.
42. Please produce all documents that support, refer, relate, or pertain to your use of a root cause analysis to respond to customer inquiries regarding service outages or otherwise.
43. Please produce all documents that support, refer, relate, or pertain to any policies you have regarding advising customers as to service problems, "the steps taken to repair and avoid their recurrence in the future," as set forth on Page 129 of the Testimony.
44. Regarding Issue 3-3, please produce all documents, including but not limited to contracts, tariffs, policies, statements, and training manuals, that address, relate, pertain, or refer to the backbilling of customers.
45. Please produce all documents that support, refer, relate, or pertain to any instance where you were unable to bill a customer or end user after 90 days.
46. Please produce all documents that support, refer, relate, or pertain to your statement on Page 133 of the Testimony that "there is a potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLECs, for unjust termination charges."
47. Please produce all documents that support, refer, relate, or pertain to any instance where BellSouth paid third parties without carefully scrutinizing its bills and then attempted to charge CLECs for these "unjustified termination charges," as set forth on Page 133 of the Testimony.

48. Please produce all documents that support, refer, relate, or pertain to any instance where BellSouth paid "third parties even when it has no contractual or other legal obligation to do so," as set forth on Page 134 of the Testimony.
49. Please produce all documents that support, refer, relate, or pertain to your statement on Page 136 of the Testimony that "[b]ecause factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison."
50. Please produce all documents that support, refer, relate, or pertain to your statement on Page 136 of the Testimony that "BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power."
51. Please produce all documents that support, refer, relate, or pertain to your statement on Page 151 of the Testimony that "[t]o the extent the Parties are carrying non-transit and non-interLATA Switched Access Traffic, the parties should proportionally split the recurring charges for trunks and associated facilities."
52. Please produce all documents that support, refer, relate, or pertain to the percentage of your traffic that consists of "non-transit and non-interLATA Switched Access Traffic."
53. Regarding your Testimony on Page 154, please produce all documents that support, refer, relate, or pertain to any instance where, after collocating in a BellSouth premise, you have been unable to "gain access to loops, transport, multiplexers, switch ports, optical terminations and the like."
54. Regarding Issue 6-2, please produce for the last 12 months all documents that support, refer, relate, or pertain to the number of CSRs you provided to BellSouth and the number of business days that elapsed between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
55. Regarding Issue 6-4, please produce all documents that support, refer, relate, or pertain to any products and/or services that you have actually ordered or wish to order from BellSouth that you contend cannot be ordered electronically.
56. For each such product or service identified in Request for Production No. 57, please produce all Local Service Requests ("LSRs") that you submitted to BellSouth for the last 12 months.

57. Please produce all documents that support, refer, relate, or pertain to your statement on Page 187 of the Testimony that "NewSouth's experience has been that a significant amount (we currently estimate 25%) of NewSouth's facility orders have to be submitted manually because of address validation errors" and that "NewSouth has found BellSouth to be delinquent in updated address records."
58. Regarding your Testimony on Page 187, please produce all LSRs that NewSouth had to submit manually because of address validation errors.
59. Regarding Issue 6-6, please produce for the last 12 months all documents that support, refer, relate, or pertain to the number of CSRs you provided to BellSouth and the number of business days that elapsed between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
60. Regarding Issue 6-7, please produce for the last 12 months all documents that support, refer, relate, or pertain to the number of CSRs you provided to BellSouth and the number of business days that elapsed between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
61. Regarding your statements on Page 197 of your Testimony, please produce all documents that support, refer, relate, or pertain to any efforts you have undertaken to develop your own OSS.
62. Please produce all documents that support, refer, relate, or pertain to any instance where you lost or were unable to acquire an end user or customer as a result of a requirement that the porting of the end user or customer to the CLEC is contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the customer or End User changing its PIC.
63. Please produce all documents that support, refer, relate, or pertain to your statement on Page 201 of the Testimony that "mass migrations at most amount to bulk porting situations. . . ."
64. Please produce all documents that support, refer, relate, or pertain to your statement on Page 202 of the Testimony that "[t]oo many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner."
65. Please produce all documents that support, refer, relate, or pertain to the specific steps and processes that you believe are needed to perform mass migration of customers.

66. Please produce all documents that relate, address, apply, or refer to your allegations on Page 203 of the Testimony that Xspedius once attempted "to accomplish mass migration of several special access circuits to UNE loops."
67. Please produce all documents that support, refer, relate, or pertain to any instance in which you have billed BellSouth or another carrier for services rendered more than 90 days after the bill date on which those charges ordinarily would have been billed.
68. Please produce all documents that support, refer, relate, or pertain to your statement on Page 213 of the Testimony that "[i]t is my understanding that the BFR/BNR process is a lengthy, expensive and typically unsatisfactory process."
69. Please identify all instances where you have used the BFR/BNR process with BellSouth.

Respectfully submitted, this 19th day of May, 2004.

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ATTORNEYS FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy (CD format only) of BellSouth Telecommunications, Inc.'s First Set of Requests for Production to Joint Petitioners on all parties of record via overnight mail on this the **19th** day of **May, 2004**.

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FRANCIS B. SEMMES

527679 (cert)

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In the Matter of)	
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Joint Petition for Arbitration of)	
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NewSouth Communications Corp.,)	Docket No. 29242
KMC Telecom V, Inc., KMC Telecom III LLC, and)	
Xspedius Communications, LLC on Behalf of its)	
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Of Mobile, LLC, and Xspedius Management Co.)	
Of Montgomery, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	
)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF
INTERROGATORIES TO JOINT PETITIONERS**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rules T-26(A)(2)(g) and (B)(2)(f) of the Telephone Rules of the Alabama Public Service Commission ("Commission"), hereby requests NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC ("CLECs" or "Joint Petitioners") to furnish answers to the following Interrogatories by June 10, 2004.

STATEMENT OF NECESSITY

The following Interrogatories seek discovery that is necessary for BellSouth to present its case to the Commission. The overwhelming majority of the Interrogatories directly relate to statements made or positions asserted in the Joint Petitioners' Direct Testimony, which consists of over 240 Pages, addresses approximately 85 issues, and is

adopted and supported by multiple witnesses in toto. BellSouth must obtain responses to this discovery in order for it to defend itself and prosecute its positions in the arbitration proceeding before the Commission.

INSTRUCTIONS

1. If any response required by way of answer to these Interrogatories is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.

2. If any response required by way of answer to these Interrogatories is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.

3. These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you.

4. If any Interrogatory cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully.

5. If you object to any part of an Interrogatory, answer all parts of the Interrogatory to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

6. These Interrogatories are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these Interrogatories subsequently become known or should your initial response be incorrect or untrue.

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3. “Xspedius” means Xspedius Communications, LLC on Behalf of its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Birmingham, LLC, Xspedius Management Co. of Mobile, LLC, and Xspedius Management Co. of Montgomery, LLC, any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Xspedius.

4. “Joint Petitioners” means NewSouth, KMC Telecom, and Xspedius.

5. “You” and “your” refers to Joint Petitioners collectively.

6. “Person” means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

7. “And” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Interrogatories information that would not otherwise be brought within their scope.

8. "Identification" or "identify" when used in reference to: (i) a natural individual, requires you to state his or her full name and residential and business address; (ii) a corporation, requires you to state its full corporate name and any names under which it does business, the state of incorporation, and the address of its principal place of business; (iii) a document, requires you to state the number of Pages and the nature of the document (e.g., a letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location or custodian; (iv) a communication, requires you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and to the extent that the communication was not written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

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including, but not limited to, electronic mail files, and copies of such writing or records containing any commentary or notation whatsoever that does not appear in the original.

INTERROGATORIES

1. Identify all persons by name, address, and employer participating in the preparation of the answers to these Interrogatories or supplying information used in connection therewith.
2. For each issue that you are identified as sponsoring in the Testimony, please identify all portions of the testimony by line and Page number that you drafted or someone else drafted pursuant to your supervision. If someone else drafted your testimony, please identify that person.
3. Please provide the basis and identify all facts and/or documents that support your statement on Page 15 of the Testimony that "BellSouth's proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission's decision is unfavorable to it."
4. Please provide the basis and identify all facts and/or documents that support your statement on Page 17 of the Testimony that "[o]bviously, this is a restrictive definition designed to serve some undefined and hereto fore undisclosed BellSouth motive."
5. Please provide the basis and identify all facts and/or documents that support your statement on Page 17 of the Testimony that "[f]or example, under BellSouth's proposed definition of 'End User,' it is arguable that certain types of CLEC customers, such as Internet Service Providers ('ISPs'), might not be considered to be 'End Users.'"
6. Please provide the basis and identify all facts and/or documents that support your statement on Page 20 of the Testimony that "[c]ertain traffic passed to NewSouth by BellSouth over our Supergroups with a '0 CIC' would likely result in unbillable and uncollectible revenues." In providing a response, please identify the traffic at issue and all instances when such traffic actually resulted in unbillable and uncollectible revenues, identifying the amounts of any unbillable and uncollectible revenues.
7. Regarding Issue No. G-4, please identify all telecommunications interconnection agreements that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.

8. Regarding Issue No. 6-4, please identify all contracts that you have with your customers, end users, vendors, or other third-parties that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.
9. Please provide the basis and identify all facts and/or documents that support your statement on Pages 23-24 of the Testimony that “the standard liability-cap formulations – starting from a minimum (in some of the more conservative contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract – more universally appearing in commercial contracts.”
10. Please provide the basis and identify all facts and/or documents that support your statement on Page 24 of the Testimony that “[t]he Petitioners’ proposed risk-vs.-revenue trade off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well.” In responding to this interrogatory, please identify each and every contract and/or commercial transaction in “electric power, natural resources and public procurement” that support your testimony.
11. Please identify the “long-established principles of general contract law and equitable doctrines,” with appropriate legal citations that you are referring to on Page 24 of the Testimony.
12. Please identify all facts, legal authority and/or documents that support your statement on Page 24 of the Testimony that “[i]n my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for non-performance or improper performance by the other party.” In responding to this interrogatory, please identify each and every “experience” you have had that supports your statement.
13. Please identify all facts, legal authority and/or documents that support your statement on Page 25 of the Testimony that “a breach in the performance of services results in losses that are greater than their wholesale costs”
14. Please identify all facts, legal authority and/or documents that support your statement on Page 25 of the Testimony that “these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers’ customer relationships as a likely consequence of any such breach.”

15. Regarding your statements on Page 25 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that the “breach in the performance of services results in losses that are greater than their wholesale costs.”
16. Regarding your statements on Page 25 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that “losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers’ customer relationships as a likely consequence of any such breach.”
17. Please identify all end users or customers by name, working telephone number (“WTN”) and date of loss that you lost as a result of any alleged breach of performance by BellSouth.
18. Regarding Issue No. G-5, please identify all of your tariffs and/or end user contracts that do not contain any limitation of liability language.
19. Please identify all limitation of liability language that exists in your tariffs and/or end user contracts.
20. Please identify all legal authority, with appropriate citation, that supports your statement on Page 27 of the Testimony that “a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement.”
21. Please identify all instances where you have asked a customer or end user rejected your request to agree to liability provisions that are similar to BellSouth’s liability provisions, as stated on Page 28 of the Testimony.
22. As to your statements on Page 28 of the Testimony, please identify every instance where you have “conceded” limitation of liability language to “attract customers in markets dominated by incumbent providers,” including the name of the customer, the WTN, and date of contract evidencing any concession.
23. Please identify all facts, legal authority and/or documents that support your statement on Page 34 of the Testimony that “[a]s is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each.” In responding to this interrogatory, please identify the specific “commercial-services” that you are referring to.

24. Please identify all indemnification language that exists in your tariffs and/or end user contracts.
25. Please identify, with appropriate legal citation, the “generally-accepted contract norms providing precisely to the contrary,” that you are referring to on Page 35 of your Testimony.
26. Regarding Issue G-9, please identify all non Section 252 arbitration proceedings, by date and case-caption, initiated by you against BellSouth at a state public service commission to resolve a dispute between you and BellSouth.
27. Regarding your statement on Page 39 of the Testimony that “BellSouth often is able to force carriers into heavily discounted, non-litigated settlements,” please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to the carriers at issue, the amount of discount, the litigation that was settled, and how you became aware of each settlement.
28. Regarding your statement on Page 40 of the Testimony that “Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this principle of Georgia law,” please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying the “BellSouth-initiated litigation” by case-caption you are referring to and the principle of Georgia law (by legal citation) you are referring to.
29. Regarding your statement on Page 42 of the Testimony that “BellSouth’s proposal attempts to turn universally accepted principles of contracting on their head,” please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to an identification of the “principles of contracting” (by legal citation) you are referring to.
30. Regarding Issue G-13, please identify all instances by date, carrier, and interconnection agreement where BellSouth has included a rate in the rate sheet of an interconnection agreement that is not the rate approved by the Commission, as set forth on Page 43 of the Testimony.
31. Regarding your statement on Page 47 of the Testimony that “[n]early all of the CLECs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement,” please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying each “bad experience,” the CLEC

experiencing the “bad experience,” the date of the “bad experience,” and the reason for the “bad experience.”

32. Please explain in detail your statement on Pages 49-50 of the Testimony that “[g]iven the proliferation of the Guide references, accepting BellSouth’s language would severely undermine the integrity of the Agreement and, indeed, the entire Section 251/252 negotiation and arbitration process.”
33. Regarding Issue G-16, please identify all instances where you have determined that BellSouth tariff changes are “inconsistent with the Agreement, or are unreasonable or discriminatory” as set forth on Page 50 of the Testimony, describing in detail the tariff change at issue, the date of the tariff change, and the reason why you believed that the tariff change was inconsistent, unreasonable, or discriminatory.
34. Please identify the paragraphs of the Triennial Review Order (“TRO”) that support the following statements on Page 54 of your testimony wherein you state: “It is my understanding that the FCC concluded, in the TRO, that carriers may convert from UNEs and UNE Combinations to wholesale services and vice versa. It is also my understanding that the FCC concluded such conversions should be seamless and not affect any end-user customer’s service.”
35. Please provide the basis of and identify all facts and/or documents that support your statement on Page 60 of the Testimony that retermination of circuits is “likely to be nothing more than a cross-connect.”
36. Please provide the basis of and identify all facts and/or documents that support your statement on Page 60 of the Testimony that “[t]he CLECs are not disconnecting a service but rather are rearranging a service that cannot be maintained as currently offered under the Agreement.”
37. Please identify the “FCC rules” you are referring to in the following statements on Page 62 of the Testimony:
 - a. “The FCC’s rules require that costs associated with Routine Network Modifications can and should be recovered by BellSouth as part of the expense associated with network investments, and therefore should already have been factored into BellSouth’s TELRIC costs.”
 - b. “Indeed, the FCC’s rules are very clear that there may not be any double recovery by BellSouth of Routine Network Modification costs by virtue of BellSouth recovering both the cost of the UNE and a new charge for Routine Network Modifications that already have been factored into the UNE rate.”

- c. "The FCC's rules are also very clear that the onus is on BellSouth affirmatively to demonstrate that a requested modification was not contemplated by BellSouth as a 'Routine Network Modification', and that the costs associated with the requested modification were not factored into BellSouth's TELRIC cost studies in any way whatsoever."
38. Please identify the FCC rules that you allege on Page 65 of the Testimony "do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs."
39. Please identify all legal authority that supports your statement on Page 65 of the Testimony that the "FCC has defined 'commingling' as the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services."
40. Please identify all legal authority that supports your statement on Page 65 of the Testimony that the "FCC has also concluded that Section 271 places requirements on BellSouth to provide network elements, services, and other offerings, and those obligations operate completely separate and apart from Section 251."
41. Please identify all legal authority that supports your statement on Page 65 of the Testimony that "[t]herefore, the FCC's rules unmistakably require BellSouth to allow Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to Section 271."
42. Please identify the paragraphs of the TRO that support your statement on Page 67 of the Testimony that "[i]t is my understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment."
43. Please provide the basis of and identify all facts and/or documents that support your statement on Page 69 of the Testimony that "[a] minimum billing period of 30 days, 2 months, etc. . . would carry with it exclusive use right thereby inhibiting a customer's ability to switch carriers as he or she wishes."
44. Regarding Issue 2-12 and your testimony on Page 70, please identify the paragraphs of the TRO that you are referring to when you state "[s]uch a provision would be inconsistent with the FCC's Triennial TRO."
45. Please identify the "issues" and the "reconsideration petition" by date and docket you are referring to on Page 70 of the Testimony, wherein you state: "BellSouth's proposed language is clearly over-expansive and proposes to

pre-decide issues currently before the FCC in at least one reconsideration petition.”

46. Please identify the specific rights to loop access and any legal support for these rights that you are referring to on Page 71 of the Testimony, wherein you state: “Petitioners’ proposed language in Section 2.1.1.2 merely seeks to retain whatever rights CLECs presently enjoy with respect to loop access”
47. Please identify all legal support for your statement that CLECs have the right to “obtain a portion of loop bandwidth so that voice-grade services may be provided by one carrier and other services, such as xDSL-based transport services may be provided by another,” as set forth on Page 71 of the Testimony.
48. Please identify all legal support for your statement that “loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning,” as set forth on Page 73 of the Testimony.
49. Please identify all legal support for your statements that “FCC orders are presumed to become law, and affect substantive rights, on their effective dates. That legal truism does not have to be expressly stated in every FCC rule,” as set forth on Page 74 of the Testimony.
50. Please identify all legal authority, with appropriate citations, that supports your statement that “all facilities and work involved in provisioning, maintaining and repairing UNEs, including loops, must be priced at TELRIC-compliant rates,” as set forth on Page 75 of the Testimony.
51. Please provide the basis of and identify all facts and/or documents that support your statement on Page 77 of the Testimony that “dispatch charges significantly undercut Petitioners’ ability to compete effectively.”
52. Please identify all customers or end users by name, WTN, and date of loss that you were unable to obtain or lost or were unable to acquire because of dispatch charges.
53. Please identify all dispatch charges that you charge your end users or customers.
54. Please identify when you are planning to deploy or use “Etherloop” or “G.HDSL Long” technologies, as described on Page 84 of the Testimony.
55. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 84-85 of the Testimony that “Federal law provides,

without limitation, that CLECs may request this type of Line Conditioning, insofar as they pay for the work required based on TERLIC-compliant [sic] rates.”

56. Please identify all legal authority, with appropriate citations, that supports your statement on Page 90 of the Testimony that “the manner in which UNE loops are provisioned, and whether they are usable for CLEC service, is squarely within the parameters of Section 251.”
57. Please identify all legal authority, with appropriate citations, that supports your statement on Page 90 of the Testimony that “loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning.”
58. Please identify all legal authority, with appropriate citations, that supports your statement on Page 91 of the Testimony that “the FCC has already found, on a nationwide basis, that CLECs should not be made to build new NIDs.”
59. Regarding Issue 2-23(D), please identify any and all of the steps, measures, protections, procedures or other processes that you would use to access an “available pair.”
60. Regarding Issue 2-24, please identify all instances by date, time, location and WTN, where you have determined that testing of the loop at a place other than the distribution frame and at the end user’s premises was required to “detect and pinpoint a problem,” as set forth on Page 97 of the Testimony.
61. Please identify all legal authority, with appropriate citations, that supports your statement on Page 97 of the Testimony that federal law “imposes no limitation on a CLEC’s right to test loops – both lit and dark fiber loops – at any technical feasible point.”
62. Please identify all legal authority, with appropriate citations, that supports your statements on Page 98 of the Testimony that “Petitioners will be paying BellSouth for these loops, and should be permitted to do whatever testing is necessary to ensure that they work.”
63. Please identify all legal authority, with appropriate citations, that supports your statements on Page 98-99 of the Testimony that “[t]he law does not require an LOA from a third party carriers [sic].”
64. Regarding Issue 2-28(A) please describe in detail your understanding of “DSL transport” or “DSL service” as used on Page 102 of the Testimony.
65. Please identify all legal authority, with appropriate citations, that supports your statement on Page 107 of the Testimony that “[t]he FCC has concluded

that such pre-audits constitute an unjust, unreasonable and discriminatory term and condition for obtaining access to UNE combinations and are prohibited.”

66. Please provide the basis of and identify all facts and/or documents that support your statement on Page 108 of the Testimony that “BellSouth’s conversions of special access to EELs have resulted in damages of approximately \$1.6 million.”
67. Please describe in detail how you calculated the \$1.6 million in damages described on Page 108 of the Testimony.
68. Please identify all FCC or state commission rules or orders that support your position that BellSouth should only be able to perform an EELs audit for cause as set forth on Page 111 of the Testimony.
69. Please identify all telecommunications interconnection agreements that have identical or similar language for EELs audits that you are proposing in this proceeding.
70. Please provide a detailed explanation of what you mean by the “concept of materiality,” as set forth on Page 114 of the Testimony, providing in detail, examples of when noncompliance would and would not be material.
71. Please identify all interconnection agreements that include the “concept of materiality” for EELs audits.
72. Please identify every instance of “controversy” regarding EELs audits by date, carrier, how each controversy was resolved that support your Testimony on Page 114, wherein you state: “Given the history of controversy that has surrounded BellSouth’s EEL audits, the Petitioners understandably have genuine concerns about the legitimacy of BellSouth’s EEL audits.”
73. Please identify all legal authority, with appropriate citations, that supports your statement on Page 118 of the Testimony that “FCC’s rules require that BellSouth provide nondiscriminatory access to the dark fiber transport UNE at any technically feasible point, including access for purposes of conducting splicing and testing activities.”
74. Please identify all legal authority, with appropriate citations, that supports your statement on Page 120 of the Testimony that BellSouth has a “CNAM unbundling obligation.”
75. Identify all instances where you lost an end user and that end user returned to BellSouth or where you were unable to acquire an end user because “caller ID does not appear,” as set forth on Page 120 of the Testimony. In responding to

this request, please identify the customer name, date, and WTN for each end user.

76. Identify all instances when BellSouth mischarged you “for a Local Channel when an intra-office cabling scheme is used to connect [your] point-of-presence to the BellSouth switch,” as set forth on Page 124 of the Testimony.
77. Please identify any and all outages that you consider to be a “global outage” for purposes of this agreement.
78. Please identify all instances in which BellSouth provided a root cause analysis to you.
79. Please identify every instance and all documents that your support your Testimony on Page 128 that you have experienced a global outage involving an entire trunk group. In responding to this request, please identify each outage by date, WTNs affected, location of outage, the trunk groups affected, how long the outage existed, the reason for the outage, and whether BellSouth provided a root cause analysis for the outage.
80. Please identify all instances and any documents that relate, address, apply or refer to the use of a root cause analysis to respond to customer inquiries regarding service outages or otherwise.
81. Please identify all documents that relate, address, apply, or refer to any policies you have regarding advising customers as to service problems, “the steps taken to repair and avoid their recurrence in the future,” as set forth on Page 129 of the Testimony.
82. Regarding Issue 3-3, please identify all documents, including but not limited to contracts, tariffs, policies statements, and training manuals, that address, relate, pertain, or refer to the backbilling of customers.
83. Please identify all instances where you were unable to bill a customer or end user after 90 days. In responding to this request, please identify each instance by date, customer name, WTNs, and amount of charges that you were unable to bill.
84. Please provide the basis of and identify all facts and/or documents that support your statement on Page 133 of the Testimony that “there is a potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLECs, for unjust termination charges.”
85. Please identify all instances where BellSouth paid third parties without carefully scrutinizing its bills and then attempted to charge CLECs for these

“unjustified termination charges,” as set forth on Page 133 of the Testimony. In responding to this request, please identify each instance by date, third party, WTNs, CLEC that was asked to pay the “unjust termination charges,” the amount of said charges, and whether the CLEC disputed these charges.

86. Please identify all instances where BellSouth paid “third parties even when it has no contractual or other legal obligation to do so,” as set forth on Page 134 of the Testimony.
87. Please provide the basis of and identify all facts and/or documents that support your statement on Page 136 of the Testimony that “[b]ecause factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison.”
88. Please provide the basis of and identify all facts and/or documents that support your statement on Page 136 of the Testimony that “BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power.”
89. Please identify all legal authority, with appropriate citations, that supports your statement on Page 138 of the Testimony that “[t]ransiting is an interconnection issue firmly ensconced in Section 251 of the Act.”
90. Please identify all legal authority, with appropriate citations, that supports your statement on Page 146 of the Testimony that “[t]he FCC has held that obligations imposed by Section 251(c)(2) and 251(c)(3) include ‘modifications to incumbent LECs facilities to the extent necessary to accommodate interconnection or access to network elements.’”
91. Please state whether you have installed the “appropriate hardware” in your switches to allow for OCn interconnection, as alleged on Page 146 of the Testimony.
92. Please identify all legal authority, with appropriate citations, that supports your statement on Page 151 of the Testimony that “[t]o the extent the Parties are carrying non-transit and non-interLATA Switched Access Traffic, the parties should proportionally split the recurring charges for trunks and associated facilities.”
93. Please identify what percentage of your traffic consists of “non-transit and non-interLATA Switched Access Traffic.”
94. Regarding your Testimony on Page 154, please identify all instances where, after collocating in a BellSouth premise, you have been unable to “gain access to loops, transport, multiplexers, switch ports, optical terminations and the

like” by date, central office, and specific equipment you were unable to access.

95. Please identify all legal authority, with appropriate citations, that support your statement on Page 178 of the Testimony that BellSouth is required by federal law to provide subscribers payment history in a CSR.
96. Regarding your testimony on Page 178 of the Testimony that certain Commissions have “already determined” that BellSouth must include subscriber payment history in a CSR, please identify the Commissions you are referring to, the docket in which a Commission made such a finding, and the date of any such finding.
97. Regarding Issue 6-2, for the last 12 months, please provide, on a monthly basis, the number of CSRs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.
98. Regarding Issue 6-4, please identify all products and/or services that you have actually ordered or wish to order from BellSouth that you contend cannot be ordered electronically.
99. For each such product or service identified in Interrogatory No. 100, please provide on a monthly basis the number of Local Service Requests (“LSRs”) that you submitted to BellSouth for each product and/or service for the last 12 months.
100. Please provide the basis of and identify all facts and/or documents that support your statement on Page 187 of the Testimony that “NewSouth’s experience has been that a significant amount (we currently estimate 25%) of NewSouth’s facility orders have to be submitted manually because of address validation errors” and that “NewSouth has found BellSouth to be delinquent in updated address records.”
101. Please identify all legal authority, with appropriate citations, that support your position on Page 188 of the Testimony that Service Date Advancements should be charged at TELRIC pricing standard.
102. Regarding Issue 6-6, for the last 12 months, please provide, on a monthly basis, the number of FOCs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a FOC and the date you provided the FOC to BellSouth.
103. Regarding Issue 6-7, for the last 12 months, please provide, on a monthly basis, the number of Reject Responses you provided to BellSouth and the number of business days that elapsed on average between the date of a request

for a Reject Response and the date you provided the Reject Response to BellSouth.

104. Please identify all legal authority, with appropriate citations, that supports your position on Page 194 of the Testimony that BellSouth is obligated under federal law to provide performance and maintenance history for circuits.
105. Regarding your statements on Page 197 of your Testimony, please identify (1) all efforts you have undertaken to develop your own OSS systems, (2) the expected completion of your own OSS systems; and (3) all components of your own OSS that remain to be completed.
106. Please identify all documents that relate, address, apply, or refer the development of your own OSS.
107. Please identify all legal authority, with appropriate citations, that support your statements on Page 197 of the Testimony that "BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between a Petitioner and BellSouth Long Distance or another third party carrier."
108. Please identify all end users you lost or were unable to acquire, by name, WTN, and date of loss, as a result of a requirement that the porting of the end user or customer to the CLEC is contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the customer or End User changing its PIC.
109. Please identify all long distance carriers that you do not have an operating, billing, and/or collection arrangement with.
110. Please provide the basis of and identify all facts and/or documents that support your statement on Page 201 of the Testimony that "mass migrations at most amount to bulk porting situations. . . ."
111. Regarding your statement on Page 202 of the Testimony that "[t]oo many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner," please identify (1) the specific obstacles you are referring to; (2) the carriers attempting to perform the mass migration; and (3) the location of the customer base that was migrated or was attempted to be migrated.
112. Please identify all legal authority, with appropriate citations, that supports your position on Page 202 that mass migration services should be priced at TELRIC.

113. Please identify the specific steps and processes that you believe are needed to perform mass migration of customers.
114. Please identify all documents that relate, address, apply, or refer to your allegations on Page 203 of the Testimony that Xspedius once attempted "to accomplish mass migration of several special access circuits to UNE loops."
115. Please identify all instances in which you have billed BellSouth or another carrier for services rendered more than 90 days after the bill date on which those charges ordinarily would have been billed.
116. Please identify all charges that would not be subject to the exemptions to the 90 day backbilling prohibition you testify about on Page 207 of the Testimony.
117. Please provide the basis of and identify all facts and/or documents that support your statement on Page 213 of the Testimony that "[i]t is my understanding that the BFR/BNR process is a lengthy, expensive and typically unsatisfactory process."
118. Please identify all instances where you have used the BFR/BNR process with BellSouth.

Respectfully submitted, this 19th day of May, 2004.

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ATTORNEYS FOR BELL SOUTH
TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy (CD format only) of BellSouth Telecommunications, Inc.'s First Set of Interrogatories to Joint Petitioners on all parties of record via overnight mail on this the **19th** day of **May, 2004**.

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FRANCIS B. SEMMES

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2004, a copy of the foregoing document was served on the following, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

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